

## **CHAPTER 3: PROPERTY MANAGEMENT**

### **3.1 OVERVIEW**

This chapter provides an overview of the essential responsibilities for property management. In general, the borrower is responsible for providing management acceptable to the Agency both in terms of staff qualifications and management practices. The borrower must ensure that property operations comply with the terms of all loan or grant documents, Agency requirements, and applicable local, State, and Federal laws and ordinances. For many of the project management responsibilities, the Agency must approve or concur in the management decisions and policies of the borrower. This chapter is designed to identify those actions that require Agency reaction to the borrower's decision.

Section 1 of this chapter deals specifically with property management including Agency approval of the borrower's management plan, the proposed management agent, and management fee. It also describes the Agency's requirements regarding:

- Items that must be addressed in the borrower's management plan (paragraph 3.3);
- Civil rights and accessibility requirements self-evaluations and transition plans (paragraph 3.4); and
- Experience that is necessary for a management entity to be acceptable to the Agency (paragraph 3.7).

Section 2 discusses the requirements for acceptable management entities and the Agency's procedures for reviewing and approving new management entities. It also outlines the Agency's procedures for removing unacceptable management entities.

Section 3 describes the program requirements regarding allowable management fees to be paid out of project income and the Agency's procedures for assessing the reasonableness of the fees.

Section 4 addresses the required insurance coverage for projects.

Section 5 discusses the project management requirements and procedures that differ for Farm Labor Housing projects.

## **SECTION 1: PROJECT MANAGEMENT**

### **3.2 OVERVIEW OF PROJECT MANAGEMENT RESPONSIBILITIES**

Borrowers must provide management acceptable to the Agency as a condition of loan or grant approval. The borrower requirements listed in this chapter may be complied with by the borrower or a person designated in writing by the borrower. Acceptable management will be documented in the management entity profile, the management plan, and the management certification.

### **3.3 THE MANAGEMENT PLAN [7 CFR 3560.102(b)]**

For each multi-family housing project, borrowers must develop and maintain a management plan that establishes the systems and procedures that will be employed at the project to ensure that project operations comply with Agency requirements. This plan is used by the Agency to guide its oversight of project operations and its monitoring of project compliance. The management plan should provide the Agency with information regarding site operations only, not about management agent central office functions. The management plan should identify differences between the information provided in it and that provided in the Management Entity Profile described in paragraph 3.5.

A management plan is initially submitted as part of the borrower's application for funding. It remains in effect until such time as the Agency requires modification of the plan, the plan needs to be updated to reflect changes occurring in project operations, or the project is transferred from one borrower to another.

#### **A. New Projects**

##### ***1. The Requirements for Submitting a Management Plan***

For new projects, borrowers must submit a management plan that addresses the required items identified below in sufficient detail to enable the Agency to effectively monitor project performance.

If the Agency determines that a proposed management plan does not adequately address the required items, Loan Processing staff will provide written notice to the borrower indicating the deficiencies and specifying a time period for submission of an acceptable plan.

No Agency loan will be closed, construction started, or transfer approved, before the Agency has an acceptable management plan from the borrower.

##### ***2. The Contents of the Management Plan***

At a minimum, management plans for multi-family housing projects must address the items presented in Exhibit 3-1 if not addressed in the Management Entity Profile.

**Exhibit 3-1****Required Items for Project Management Plans**

1. **Maintenance.** Describe the systems, including procedures for carrying out routine maintenance, decorating, inspections, and capital item repair and replacement that will be employed to ensure that the project is adequately maintained.
2. **Personnel.** Describe the job descriptions, staffing plans, and site functions to be performed by site staff or central office staff assuming front line duties.
3. **Financial Operations.** Provide example of the accounting system the management agent will use (approved by the Agency) and the procedures for ensuring that the system is implemented in accordance with Agency requirements. Highlight what accounting systems will be performed on site. Describe procedures for record keeping.
4. **Procurement.** Describe the procurement procedures used at the project to ensure that the Agency procurement requirements are met.
5. **Rents.** Describe the project's procedures for rent, occupancy charge, security deposit, and fee collection (such as late fees) and for implementing a rent, utility allowance, occupancy charge increase, or change in fees.
6. **Marketing.** Describe the project's procedures for marketing units to ensure compliance with the fair housing laws. The affirmative fair market plan is included as **Attachment 3-A**.
7. **Leasing.** Describe the on-site procedures regarding unit leasing that will be employed to ensure compliance with program occupancy requirements, including applicant eligibility, maintaining and purging the waiting list, certifying and recertifying income, tenant selection, termination of leases, and evictions. Project occupancy policies, occupancy rules, dwelling lease forms, and sample waiting list forms that have received Agency concurrence should be included as attachments.
8. **Tenant Relations.** Describe project procedures for ensuring that applicant and tenant grievances are handled in accordance with program requirements and that tenants participate in property operations. Work with Tenant Association, if one exists, to address tenant concerns.
9. **Supplemental Services.** Describe any supplemental services offered at the project and the procedures for providing these services, including laundry, vending machines, and security.
10. **Previous Participation Certification.** *Form RD-XXXX* (see **Attachment 3-C**) reports the names of all principals and affiliates of the management agent and any previous housing projects in which they have participated. It further certifies that they are currently eligible to participate in the management of Agency projects.
11. **Americans with Disabilities Act (ADA) Compliance.** Describe how management will make known to tenants and applicants that reasonable accommodations under the ADA will be made at the borrower's expense (unless such accommodations would cause an undue financial or administrative burden). The plan must also describe how such requests are to be made, and who within management will have the authority to approve or disapprove a request for an accommodation.
12. **Compliance with State and Local Requirements.** Affirmative statement that management plan complies with State and local requirements.
13. **Allowable Expenses.** Describe the allowable expenses that can be charged to the project and those which are included in the management fee.

### ***3. Agency Review of the Proposed Management Plan***

In reviewing a proposed management plan, the Agency must ensure that it does not contain policies that violate Agency regulations and that it provides adequate details regarding the items in Exhibit 3-1 for the Agency to effectively monitor project compliance with program requirements. Staff must also review the proposed Management Entity Profile prior to approving the plan to ensure that any agent weaknesses are adequately addressed in the management plan with regard to on-site staff training and oversight. Finally, approval of the management plan does not indicate that the Agency has determined that the plan complies with State and local requirements.

## **B. Existing Projects**

### ***1. General Requirements for Maintaining and Modifying a Management Plan***

In accordance with the requirements of this chapter, the borrower must develop and maintain a management plan acceptable to the Agency. A borrower's failure to maintain an acceptable plan is grounds for Agency termination of the management agent. For borrowers with an Agency-approved management plan, this management plan will remain the guiding management document as long as it accurately reflects project operations and the borrower remains in compliance with Agency rules and regulations.

Borrowers must submit an updated management plan to the Agency if project operations change and are no longer consistent with the current management plan on file with the Agency. The Agency should expect to see a modified management plan when:

- Project operations change to meet the needs of a changing tenant population;
- Program requirements change; or
- Changes in subsidy levels or types occur (e.g., Section 8 is converted to Rental Assistance and/or units are reduced) or the property is converted to another allowable use (e.g., changed from a family property to an elderly property).

When a housing project is transferred from one borrower to another, the transferee must submit a new management plan that addresses the items listed in Exhibit 3-1.

### ***2. Agency Request for and Review of a Modified Management Plan***

If the Agency determines that project operations are in compliance with Agency requirements, loan or grant agreements, or applicable local, State, and Federal laws, but are not consistent with the management plan, the Agency will notify the borrower of the discrepancy in writing and indicate that the existing plan is no longer acceptable. Upon receiving notice that project operations are not consistent with the current management plan, borrowers must take one of the following actions within 60 days from the date of the Agency's letter:

- Revise the management plan to accurately reflect housing operations;

- Take actions to ensure the management plan is followed; or
- Advise the Agency in writing of the action taken.

If the borrower submits a modified management plan, the Agency will review the plan for the necessary changes and ensure that the plan adequately addresses the requirements of the discrepancy. The Agency may visit the project or management agent's office to ensure that documented changes have occurred.

### **C. Three Year Borrower Certification of Adequacy of Plan**

When there have been no changes in a project's operations, borrowers must submit a certification to the Agency every three years stating that the project operations are consistent with the current management plan and the plan is adequate to ensure project compliance with the loan documents and the applicable requirements of this part (see **Attachment 3-A**).

### **D. Projects With Compliance Violations**

#### ***1. Notification of the Borrower***

If the Agency determines that there are compliance violations at a project, the borrower must respond to the Agency notification and update the management plan in accordance with the requirements below. If the borrower does not fulfill the requirements of this section, the Agency will deem the management plan for the project unacceptable and the borrower/agent may be subject to termination of their management agreement.

#### ***2. Borrower Response to Agency Notification***

Upon receiving notice of compliance violations at a project, borrowers must address the violations in accordance with 7 CFR 3560.102(d) and update the management plan as follows:

- Borrowers must submit to the Agency, within 60 days, revisions to the management plan that establish the changes in project operation that will restore project compliance.
- If the borrower determines that changes to the management plan are not needed because the compliance violations were due to a failure to follow the current management plan, the borrower must certify to the Agency that the management plan is adequate to ensure project compliance with the applicable requirements of this part. Borrowers must submit a written description of the actions that will be taken, including time frames for restoring compliance with the current management plan and Agency rules and regulations.

### **E. Continued Management Discrepancies**

If the Agency discovers continued discrepancies between a project's management plan and project operations, the Agency retains the authority to terminate the current management agreement and require the borrower to install a new management entity acceptable to the Agency.

## **3.4 SELF-EVALUATIONS AND TRANSITION PLANS**

On June 11, 1982, USDA issued 7 CFR 15b, which required all borrowers to conduct self-evaluations of their compliance with civil rights requirements within one year of the USDA regulation. Information on civil rights related compliance issues as they affect Section 514, 515, 516, and 521 housing may be found in answers to frequently asked questions in **Attachment 3-I**. In the event that structural changes were necessary, recipients were required to develop transition plans that set forth the steps necessary to complete such changes.

Borrowers may become liable for fines and penalties imposed by enforcement agencies, loss of tax credits, or legal actions if found in noncompliance with civil rights laws. While the Agency does not impose these fines and penalties, RHS will follow regulatory, supervisory, and servicing procedures and loan eligibility requirements when noncompliance is found.

### **A. Borrowers Required to Conduct Self-Evaluations and Develop Transition Plans**

The following borrowers must conduct self-evaluations and develop transition plans:

- Borrowers of projects ready for occupancy on or before June 10, 1982.
- Borrowers of projects ready for occupancy after June 10, 1982, who have been found in noncompliance with Civil Rights law (as a remedial action).
- Borrowers who have had complaints filed against them, when the Agency determines it necessary.
- Borrowers transferring ownership.
- Borrowers of projects receiving rehabilitation or equity loans, when the Agency determines it necessary.
- Borrowers receiving loans for new construction after August 20, 2002. The Agency will review the self-evaluation and any transition plan during the preoccupancy conference.
- All state and local government borrower entities. The U.S. Department of Justice issued a regulation on July 26, 1991, which requires all State and local governments to conduct self-evaluations, unless they had already done so to meet the requirements of Section 504.

- Borrowers receiving loans after January 1, 2001, if a self-evaluation has not been previously conducted within the last three years.

## **B. Standards that Borrowers Must Meet**

Regardless of when a project was ready for occupancy, all borrowers are required to have policies and practices that do not discriminate against persons with disabilities. Examples of such policies and practices are provided in **Attachment 3-D**. The architectural accessibility standards borrowers must meet will depend on when the project was ready for occupancy and what modifications are planned. See Chapter 5, **Attachment 5** for a summary of the architectural accessibility standards. In addition, many State and local governments have their own accessibility standards that must be met. The Agency does not have the authority to waive any of the accessibility requirements.

## **C. Self-Evaluation and Transition Plan Requirements**

### ***1. Self-Evaluations***

In accordance with 7 CFR 15b, the following are required:

- Evaluate with the assistance of interested persons, including persons with disabilities or organizations representing disabled persons, its current policies and practices and the effects thereof;
- Modify after consultation with interested persons, including disabled persons or organizations representing disabled persons, any policies and practices that do not meet the requirements of this part;
- Take after consultation with interested persons, including disabled persons or organizations representing disabled persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices; and
- Maintain a record of the self-evaluation for at least three years. The record must be made available for public inspection and be provided to the Agency upon request. The self-evaluation record must contain:
  - ◊ A list of the interested persons consulted;
  - ◊ A description of areas examined and any problems identified; and
  - ◊ A description of any modifications made and any remedial steps taken.

### ***2. Transition Plans***

At a minimum, transition plans must:

- Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to disabled persons;
- Describe in detail the methods that would be used to make the facilities accessible;
- Specify the schedule for taking the steps necessary to achieve full program accessibility and if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and
- Identify the person responsible for implementation of the plan.

When structural changes are necessary, such changes must be made as expeditiously as possible within three years.

### 3.5 THE MANAGEMENT ENTITY PROFILE

For all proposed and existing management agents, including borrower-managed properties, borrowers must submit *Form RD-XXXX, Management Entity Profile* to the Agency (see **Attachment 3-B**). This form will be used in determining the acceptability of an agent under paragraph 3.4(b), as well as informing Agency monitoring activities.

The Agency will approve or reject management agents proposed by the borrower. A borrower must submit a Management Entity Profile for new management agents at the time initial approval of the Agent is requested. Amendments to the profile must be submitted when any information on the current profile changes. A new profile, incorporating all amendments and modifications must be submitted to the Agency every year.

For management agents proposing to identity-of-interest (IOI) firms to provide goods and services to Agency properties, a fee schedule of these goods and services must be attached to the Management Entity Profile. The Agency must approve the borrower's use of such firms prior to the borrower entering into any contractual relationships that involve Agency funds with such entities. For a discussion of identity-of-interest, please see paragraph 3.7 A.2.

After the borrower or management agent discloses an IOI relationship in the Management Entity Profile, the Agency may:

- Request the borrower, management entity, and supplier of goods and services to provide documentation proving that use of IOI firms is in the best interest of the housing project;
- Request that all suppliers of goods and services agree to certify in writing to the Agency that the individual or organization proposed is qualified and licensed, if appropriate.
- Request the borrower, management entity, and supplier of goods and services to agree in writing to make available all of its records relating to the housing project to the Agency or the Agency's representative; and



- Deny the use of an IOI firm when the Agency determines that using the firm is not in the best interest of the Federal government or the tenants.

### 3.6 THE MANAGEMENT CERTIFICATION

As a condition of Agency approval of the management agent and the management fee, the borrower and the management entity must execute a *Form RD-XXXX, Management Certification* (see **Attachment 3-E**), and submit this to the Agency each time the borrower proposes a management agent and a management agreement is executed. The management certification replaces the need for the Agency to preapprove the management agreement. The borrower and the management agent must jointly submit the certification to the Agency to attest that:

- The borrower and management agent agree to operate the housing project in accordance with the Agency-approved management plan;
- The borrower and management entity will comply with Agency requirements and contract obligations, agree that no payments have been made to anyone in return for awarding the management contract to the management agent, and ensure that such payments will not be made in the future;
- The borrower and the management agent will comply with Agency handbooks, notices, and other policy directives that relate to the management of the housing project;
- The management agreement between the borrower and the management entity complies with the requirements described below in paragraph 3.5 A;
- The borrower and the management agent will refrain from purchasing goods and services from entities that have IOI relationships with the borrower of the management agent until the IOI relationship has been disclosed to the Agency in accordance with paragraph 3.5 and not denied by the Agency; and
- The borrower, management agent, and supplier of goods and services agree that all records relating to the housing project are the property of the project, the Agency, and the Agency's representatives.

The management certification also requires that the borrower and the management agent identify any and all IOI relationships that would involve project funds. The *Form RD-XXXX, Management Certification* must be submitted to the Agency.

#### A. The Role of the Management Agreement

While the Management Certification replaces the need for the Agency to approve the management agreement, it does not eliminate the need for the borrower and the agent to execute a management agreement. By executing the management certification, the borrower and the agent are assuring Agency staff that an acceptable agreement has been

executed. Agency staff may review this agreement during the annual compliance review. At a minimum, projects with identity-of-interest agents or independent fee agents must execute a management agreement. An agreement is recommended, but not required, for owner-managed projects.

### ***1. Required Contents of the Management Agreement***

The owner and management agent may negotiate their own form of agreement provided that it contains language that meets the following requirements:

- **Scope of service.** All management agreements must describe the bundle of services the agent is responsible for performing and for which the agent will be paid a management fee.
- **Required clauses.** All agreements must provide that:
  - ◇ Management fees will be computed and paid according to Agency requirements.
  - ◇ The Agency may require the owner to terminate the agreement:
    - ◆ Immediately, in the event a default occurs under the Mortgage, Note, or Subsidy Contract attributable to the management agent; or
    - ◆ Upon 30 days written notice, for failure to comply with the provisions of the Management Certification or other good cause.
  - ◇ If the Agency terminates the agreement, the owner will promptly make arrangements for providing management that is satisfactory to the Agency.
  - ◇ The Agency's rights and requirements will prevail in the event the management agreement conflicts with them.
  - ◇ The management agent will turn over to the borrower all of the project's cash, trust accounts, investments, and records immediately, but in no event more than 30 days after the date the management agreement is terminated.
- **Prohibited "hold harmless" clause.** Management Agreements cannot exempt the agent from all liability for damages and injuries. A sample prohibited clause would read:

*"The owner agrees to hold and save agent harmless from dangers of injuries to persons or property by reason of any cause whatsoever, either in or about the premises or elsewhere, when agent is carrying out the provisions of this agreement, or acting under the express or implied direction of the owner."*

To make this clause acceptable:

- ◇ Delete the underlined words, and
- ◇ Add "unless such injuries resulted from the agent's gross negligence or willful misconduct" after "direction of the owner". A sample "hold harmless" clause that would not be prohibited would read:

*"The owner agrees to hold and save agent harmless from dangers of injuries to persons or property, either in or about the premises or elsewhere, when agent is carrying out the provisions of this agreement, or acting under the express direction of the owner, unless such injuries resulted from the agent's gross negligence or willful misconduct."*

## **2. Term of the Management Agreement**

The term of the agreement is negotiated between the owner and the management agent. However, such an agreement must not exceed three years. Loan Servicers may impose a shorter maximum term on the management agreement if the agent is approved on a conditional basis (see paragraph 3.7.C for guidance on when a conditional approval may be issued).

### **B. Agency Approval of the Management Certification**

A certification must be submitted for Agency approval prior to the initial approval of the management agent. Subsequent certifications must be submitted for Agency approval when any of the following occurs:

- An increase in the management fee is requested;
- A new management agent is proposed; or
- A management agreement expires and a new agreement is executed or renewed.

The borrower must submit a new certification to the Agency for approval at least 45 days prior to the date of the proposed change. The Agency will return the approved or denied certification within 30 days of receipt.

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## SECTION 2: APPROVING, REMOVING, AND REVIEWING THE MANAGEMENT AGENT

### 3.7 THE MANAGEMENT AGENT

#### A. Acceptable Types of Management Entities

Exhibit 3-2 shows the three types of management entities.

#### Exhibit 3-2

##### Three Types of Management Entities

- |  |
|--|
| <ol style="list-style-type: none"> <li>1. Borrower/Manager</li> <li>2. Identity-of-Interest (IOI) Management Agent</li> <li>3. Independent Fee Management Agent</li> </ol> <p>(In this handbook, the term "management agent" applies to all three forms of management entities unless a specific distinction is made because of policy or procedural differences.)</p> |
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#### 1. *Borrower/Manager*

In the borrower/manager relationship, the borrower and the management agent are the **same business entity**. This is also referred to as **self-management**. A project is not self-managed if some or all of the same individuals are involved in both the borrowship entity and the management agent but the organizations are legally different business entities.

For example, if the borrower is a limited partnership, and the general partner of the borrowship entity serves as the management agent, the management agent is not a borrower/manager because the management agent and the mortgagor are different business entities. Instead, the management agent is an **identity-of-interest management agent** (see below).

#### 2. *Identity-of-Interest (IOI) Management Agent*

An IOI relationship exists when an individual or entity that provides goods, management, and other services to the project has a relationship with the project borrower that is such that selection of the management agent and determination of the management fee will not be determined through an arms-length transaction. Exhibit 3-3 further describes this relationship.

Failure to disclose such IOI relationships may subject the borrower, the management agent, and other firms or employees among whom the IOI relationship exists to suspension, debarment, or other remedies available to the Agency.

**Exhibit 3-3****Identity-of-Interest Relationships**

An identity-of-interest relationship exists when:

- The borrower entity or a general partner of the borrower entity, or
- Any officer or director of the borrower entity, or
- Any person who directly or indirectly controls 10 percent or more of the voting rights, or owns 10 percent or more of the borrower entity

is also

- A borrower, general partner, officer, or director of the management agent company or its subcontractor, or
- A person who directly or indirectly controls 10 percent or more of the voting rights, or owns 10 percent or more of the management company or its subcontractor.

"Person," as used above, refers to any individual, partnership, corporation, or other business entity. Any borrowings, control, or interest held or possessed by a person's spouse, parent, child, grandchild, or sibling or other relation by blood or marriage is attributed to that person for this determination.

"Subcontractor," as used above, refers to any individual or company that contracts with the management agent to provide management services to the project.

**3. *Independent Fee Management Agent***

An independent fee management agent is a management company or individual that has no identity-of-interest relationship with the borrower and no financial interest or involvement in the project, other than earning a fee for providing management services.

**B. Approval of the Proposed Management Entity****1. *General Agency Approval***

A management entity will be deemed acceptable by the Agency provided that the agent has a minimum of two years of experience and satisfactory performance in directing and overseeing the management of similar federally-assisted multi-family housing.

In addition, the Agency may issue approval to a management agent if the agent's Previous Participation Certification, as shown in **Attachment 3-C** to this chapter, shows that a small percentage of the properties it has managed are either in default or have a mortgage delinquency and either one of the following can be documented:

- The default or delinquency was due to circumstances beyond its control; or
- The agent is making satisfactory progress toward improving the problem property's operations.

The Agency may issue conditional approval to a proposed management agent if:

- It has two years' experience successfully managing 514, 515, or 516 properties as relevant or other assisted housing, or employs staff that has this experience, or if it hires a consultant who has this experience, and if it agrees to obtain this experience; and
- If the agent's Certification of Previous Participation shows that a small percentage of the properties it has managed are either in default or have a mortgage delinquency and it is unclear whether or not the agent is making necessary efforts to correct the property's or properties' deficiencies.

The Agency reserves the right to deny approval of any proposed management entity that does not meet such requirements. The agency may issue a denial of a proposed management agent if:

- The agent and/or its staff does not have two years experience successfully managing 514, 515, or 516 properties as relevant or other assisted housing; and/or
- If the agent's Previous Participation Certification shows that a substantial percentage of the properties it has managed are either in default or have a mortgage delinquency; or
- If the agent's Previous Participation Certification shows that a small percentage of the properties it has managed are either in default or have a mortgage delinquency and the management agent is not addressing the property's or properties' deficiencies.

The Agency must ensure that all prospective management agents are given a copy of these criteria, in addition to the criteria for conditional approval of management agents (see paragraph 3.7 (c) for a discussion of conditional approval of management agents).

To request approval of the management entity, the borrower/agent must submit the following information to the project's Field Office at least 45 days before the date the borrower wishes the new agent to assume responsibility. In the case of emergency replacements of management agents, the borrower/agent must submit the information needed for the Agency to review and approve the new management agent as soon as the new agent is identified. Borrowers must submit the following documents when requesting Agency approval of an Agent:

- **Management Plan.** The management plan establishes the systems and procedures that will be employed on-site to ensure that project operations comply with Agency requirements (see paragraph 3.3). A *Previous Participation Certification, Form RD-XXXX* (see Exhibit 3-1, item 10) must be included as an attachment to the Management Plan.
- **Management Entity Profile.** *Form RD-XXXX* (see **Attachment 3-B** and paragraph 3.4) provides the Agency with information on the management entity's organization

and procedures, including treatment of identity-of-interest relationships. It also shows the types of projects the agent has managed and what skills or professional certificates the agent's staff holds. It does not provide information on how the agent has operated individual projects.

- **Management Certification.** Using *Form RD-XXXX* (see **Attachment 3-D** and paragraph 3.5), the borrower and management agent together certify that they will comply with Agency requirements and contract obligations, will execute an acceptable management agent agreement, and that no payments have been made to the borrower in return for awarding the management contract to the agent nor will such payments be made in the future.

- **Proposed Staffing to be Charged Against the Project Operating Account.** Borrowers/agents must provide a listing of the staff whose salaries will be paid from the project's operating account. The list must include:

**Note:** Salaries of management agent supervisory staff not assigned to the project must be paid from the management fee. Only frontline supervisors working as on-site managers may be paid from the project account.

- ◇ Job titles and approximate salary, including hourly rate;
- ◇ A statement of each position's duties, if not obvious by title, and whether the position is full- or part-time; and
- ◇ If the employee will be working for more than one project and/or working part-time for the agent in a nonsupervisory capacity, a statement of how that person's time and salary will be allocated.

Any changes in the staffing structure described in the listing above or additions in staff, which would require submitting a rent increase request to the Agency, must be documented as part of the budgeted rent increase request process.

- **Additional Information Required by the Field Office.** Agency staff may require borrowers to submit additional information to clarify materials already submitted. Materials requested may address:
  - ◇ Determining the management agent's acceptability.
  - ◇ Monitoring the agent's compliance with Agency requirements.
  - ◇ Resolving project operating problems.
  - ◇ Justification of contractual relationship with IOI or third-party contractors.



Exhibit 3-4 lists the types of additional information that may be needed to assess the acceptability of a proposed agent. Agency staff should not require borrowers to submit this type of information on a specific form.

**Exhibit 3-4**  
**Information Servicing Offices Might Need to Assess**  
**the Acceptability of a Proposed Management Agent**

| Situation   | Type of Information   |
|---|---|
| 1. The Servicing Office is familiar with the agent's operating procedures and agent has satisfactorily managed projects similar to the one under consideration. | Explanation of how operating and oversight procedures for this project will vary from any others normally used by the agent.  |
| 2. Project has significant physical, financial, or social problems.   | <ul style="list-style-type: none"> <li>• Statement of project's problems and their causes.</li> <li>• Review of recent management reviews and any open IG audits on the project.</li> <li>• List of actions to be taken to eliminate those causes and correct the problems (e.g., repairs, rent increase, change in operating procedures).</li> <li>• Schedules for implementing the above actions.</li> <li>• List of projects with similar problems or needs that the agent has previously or is currently managing.</li> </ul> |
| 3. New project preparing for rent-up.   | Description of planned advertising and marketing efforts. ( <u>Note</u> : If an Affirmative Fair Housing Marketing Plan is on file for the project, use the information in that plan.)  |
| 4. Owner/manager proposes to contract out certain management functions.   | List of functions to be contracted out, as well as a description of the contractual relationship and the contractor's qualifications and experience in those functions. Documentation that demonstrates the contractual relationship is in the best interest of the project.  |
| 5. Project is different from any other project(s) the agent is currently managing in the Area Office's jurisdiction   | List of similar projects in other Area Office jurisdictions.  |

The Agency must review all of the items listed above within 30 days of receipt. The review will consist of the following:

- Review of the Management Profile to determine if the proposed management agent has the required experience to manage Section 514 or 515 housing, in order to be granted either conditional or full approval;
- Review of the Certification of Previous Participation. If the management agent is new to the Agency, the servicing jurisdiction must do the following:
  - ◊ If the management agent manages properties assisted by HUD, Local Public Housing Agencies, and State Housing Agencies, the Agency is required to obtain references from the appropriate jurisdiction on the management agent's past performance. For instance, if the management agent has managed HUD properties, then the Agency is required to contact the appropriate HUD field office and obtain a reference or request that HUD provide a copy of the most recent 2530 (Previous Participation Certification).
  - ◊ In addition, if the management agent has managed other assisted housing, the Agency is required to obtain a reference from an owner of assisted housing with whom the management agent has contracted.
  - ◊ If the management agent has managed properties in which it has an IOI relationship with the owner and those in which it has no IOI relationship with the owner, the Agency must obtain a reference from an owner with whom no IOI relationship with the management agent exists.
- Review of the proposed Management Plan to ensure compliance with the Agency's submission requirements, and to determine if the proposed systems and procedures:
  - ◊ Are in compliance with Agency requirements;
  - ◊ Can reasonably be implemented at the project; and
  - ◊ Are reasonably tailored to the particulars of the project.
- Making a decision to grant full or conditional approval, or deny approval of the management agent.

Within 30 days of receipt of information from the borrower/management agent, the Agency will inform the borrower of its decision in writing.

If the Agency grants full approval, the borrower may enter into a contract with the management agent to begin no sooner than 45 days from the date of submission of the approval package.

If the Agency issues a conditional approval, its written decision must include the conditions under which the management agent may be granted full approval or termination.

If the Agency issues a denial, the borrower has a right to appeal the decision within 15 days of receipt of the Agency's decision.

The borrower may not enter into a formal agreement with the management agent being reviewed by the Agency. If a borrower enters into an agreement with a management agent or begins to self-manage prior to receiving Agency approval, the Agency will place the borrower in nonmonetary default status. The Agency will ask the borrower, if not in a self-management arrangement, to immediately terminate the contract with the management entity. Under emergency circumstances, with Agency consent, the borrower may enter into a temporary agreement with a different management entity for 30 days.

### **C. Conditional Approval of Management Agents**

When a borrower requests the Agency to approve a management agent who does not have the minimum required experience or with whom the Agency has had questionable experience in the past, the Loan Servicing staff may choose to issue a conditional approval of the management agent. In issuing conditional approvals, it is recommended that the guidelines in Exhibit 3-5 be followed. In issuing a conditional approval, the Loan Servicing staff should make sure the following items are addressed:

#### **Exhibit 3-5**

##### **Reasons for Conditional Approval of a Management Agent**

- The management agent has at least two years experience successfully managing multi-family housing, has no experience managing assisted housing of any kind, or staff that has this experience, but will hire to help the agent to obtain this experience.
- The management agent has managed assisted housing, but not Section 514, 515, or 516 properties.
- The management agent has the required experience, but the Agency has evidence of questionable past performance in the management of other properties.
- The management agent has no prior housing management experience but has a realistic plan for obtaining this experience and will work with an acceptable management agent or consultant until the necessary experience is obtained.
- The management agent has no experience managing Section 514, 515, or 516 properties but employs staff that has this experience.
- The management agent has experience managing Section 514, 515, or 516 housing. The firm has been terminated by the Agency in one state, but is successfully managing Agency properties in another state.

### ***1. The Length of the Conditional Approval***

The conditional approval will last no longer than 12 months. If at that time the conditions for the approval have not been met, then a full approval will not be issued by the Agency and the borrower must replace the management agent within 30 days. A management review of the agent and the property should be conducted at the end of the conditional approval period. This review will be the basis for the issuance of the full approval by the Agency.

This section of the conditional approval should also give the Agency the right to terminate the conditional approval at any time if the Agency feels that the agent is not meeting the conditions established for the conditional approval.

### ***2. The Conditions for the Approval***

This section of the approval should clearly spell out the conditions that the Agency demands in exchange for granting conditional approval as well as the conditions that will need to be met prior to approval.

For example, the conditional approval is being issued subject to implementation of an agency-approved action plan in which the agent will:

- Obtain training with regard to Sections 514, 515, and 516 procedures as relevant;
- Work with an Agency-approved management agent over a six month period to learn how to manage a multi-family property; or
- Revamp existing procedures for on-site managers to correct deficiencies (specific deficiencies should be identified).

Full approval will be granted if:

- The agent is able to properly follow Agency-established procedures for the execution and submission of tenant certifications in a timely manner;
- The agent is able to demonstrate competence in managing Section 514, 515, and 516 multi-family property without the assistance of another Agency-approved management agent; or
- The agent has corrected the identified deficiencies and revamped its policies and procedures to ensure the deficiency will not arise in the future.

Prior to issuing a full approval on the agent, the Loan Servicing staff should complete a full management review on the management agent in accordance with paragraph 3.9.

#### **D. Removal of a Conditional Approval**

A conditional approval will be automatically removed if a full approval is not granted by the Agency at the end of the conditional agreement. However, the Agency reserves the right at any time during the agreement if it believes it is in the best interest of the property and the government to terminate the conditional agreement with the agent.

If the Agency has issued conditional approval to a management agent to manage a particular property, it must perform a Management Review of that agent/property between nine and twelve months from the date that the agent assumed management responsibility. If the Agency rates the management agent's performance as unacceptable, the agent's contract will expire at the end of the twelfth month and may not be renewed. If the Agency rates the management agent as acceptable or above, the Agency may issue full approval to the agent. See Exhibit 3-6.

#### **Exhibit 3-6**

##### **Ratings for Full or Conditional Approval of Management Agency**

| <b>Management Review Rating</b> | <b>Agency Action</b>  |
|---------------------------------|---|
| Acceptable                      | Agency will issue full approval   |
| Unacceptable                    | Agency will require borrower to terminate management contract at the end of the first year. |

#### **E. Use of Management Entities Without Agency Approval**

If a borrower enters into an agreement or contract with a management entity that has not been approved by the Agency, the Agency is authorized to immediately terminate the borrower's agreement or contract with that entity. This action is not appealable.

### **3.8 REMOVAL OF A MANAGEMENT AGENT**

As permitted in the management agreement and the management certification, the Agency reserves the right to remove the management agent for lack of performance or deliberate fraud against the project or the government. Some specific reasons for requiring removal of a management agent are listed in Exhibit 3-7.

**Exhibit 3-7****Specific Reasons for Requiring Removal of a Management Agent**

1. Lack of Performance
  - Failure to adhere to the provisions of the Management Agreement
  - Repeated failure to adhere to the Management Plan
  - Noncompliance with applicable state and local laws
2. Fraud against the project and/or government
  - Misappropriation of project funds
  - Paying kickbacks to contractors, subcontractors, or service providers
  - Deliberately requesting more Rental Assistance than that to which the project is entitled

If the Agency determines that the management agent is in violation of the Management Agreement, the Agency will:

- Send a servicing letter notifying the borrower of the violation;
- State that the management agent must prove that there was no violation or that there were mitigating circumstances, and the owner must respond to the Agency within 30 days of the receipt of the servicing letter;
- If the borrower does not respond satisfactory within the prescribed time period with either 1) documentation that the violation did not take place, or 2) a plan to address the violation within a certain period of time that is acceptable to the Agency, the Agency will send the borrower a second servicing letter; and
- If the borrower does not respond within the prescribed time period in the second servicing letter, the Agency will send a third servicing letter indicating that the management agreement will be terminated by a certain date. As of that date, no management fees may be paid to the agent from project funds. If the audit reveals that management fees were paid to the agent subsequent to termination of the management agreement, the borrower will be required to reimburse the funds to the project operating account.

If the borrower is required by the Agency to remove the management agent in place, they must do so under the time frame required by the Agency or file an official appeal, as described in Chapter 1, stating why they believe the Agent should not be removed. Failure on the part of the borrower to comply with Agency demands to remove the Agent may result in acceleration of the loan and debarment from further participation in Agency programs.

### 3.9 REVIEW OF A MANAGEMENT AGENT AND ON-SITE MANAGEMENT

#### A. Central Office Reviews

In some cases, agents with more than one property perform certain management functions from a centralized location. General management functions, as well as financial management and selected occupancy functions, are activities these agents often choose to centralize. Agency staff must perform management reviews of the agent's central office activities as well as regular on-site reviews of functions carried out at the projects. The purpose of the centralized review is to limit the time spent reviewing individual properties. For example, once a review is performed on the agent's central office books, records, and internal controls, they will not need to be inspected at each individual property.

When a management firm operates in more than one servicing jurisdiction in a State, the State Office has the responsibility for coordinating centralized reviews. They may solicit assistance from the servicing office that is located closest to the Central Office proposed for review. The State Office has the responsibility for ensuring the review is conducted, resolving any outstanding findings, and forwarding a copy of the review to other servicing offices with properties managed by that agent.

Central office management reviews should be performed at least once every three years. Findings from that review will be valid for any supervisory visit conducted during that time.

When a management firm operates in more than one state, states may elect to coordinate this review separately or may jointly choose one state to conduct the review. If one state will coordinate the review, typically the state in which the management agent's home office is located has this responsibility.

Whenever possible, a team of Agency staff with particular expertise, rather than a single staff member, should perform these reviews. An ideal team would consist of a Loan Servicer and individuals with expertise in financial management and occupancy requirements, if staffing permits. Additional members may be appropriate depending on the size of operation and types of functions handled by the agent's central office.

Central office management reviews follow a modified management review format. Agency staff performing this type of review should review the following items for compliance with the Management Plan:

- Management Agent and Financial Management
- Occupancy and Tenant Selection (those items that correspond to activities handled at the agent's central office) including Drug Free Housing Policy
- General Management of Project and Physical and Financial Operation

In completing the review, Agency staff should assess whether the agent's procedures allow the Agency to examine the performance of each project individually for all of the applicable items above.

**B. On-Site Management Reviews**

On-site reviews of management agent performance will be performed using the procedures described in Chapter 9.



## SECTION 3: SETTING THE MANAGEMENT FEE

### 3.10 THE MANAGEMENT FEE

#### A. The Purpose of the Management Fee

The purpose of the management fee, which is an allowable expense paid for out of the housing project's general operating account, is to compensate the management agent for services provided to the project. These services are detailed further in **Attachment 3-F**.

#### B. Types of Management Fees

There are three major types of fees that, when added together, make up the overall management fee for a project. The three types of fees are:

- Occupied unit fee;
- Add-on fees; and
- Incentive fees.

The occupied unit fee is the largest component of the management fee. It must be quoted and calculated as a per unit per month (pupm) fee for units occupied during a given month. This requirement serves two purposes.

- It gives the agent an incentive to maximize occupancy; and
- It is easier to monitor than a residential income fee calculated as a percentage of income collected by the agent.

Split occupied unit fees are management fees that are split or shared between a borrower and a management agent.

Add-on fees are quoted as dollar per unit amounts because they relate to project conditions that are not a function of project occupancy.

Incentive fees are quoted as dollar per unit amounts, and are designed to reward management agents for good or superior performance.

#### *1. Occupied Unit Fee*

Every three years, the National Office will establish a pupm fee to be paid to the management agent for each occupied unit in the project. Fees will be established on a state-by-state basis. These fees will be based on the Agency's research on fees charged to manage other assisted housing of various types—elderly, family, cooperative, group homes—in the state. The Agency will use available data from recognized nationwide sources to determine appropriate fee levels.

Agents will be eligible to receive the full pupm fee for any month or part of a month during which the unit is occupied. State Offices can make adjustments to the fees approved by National Office by:

- Surveying comparable types of unassisted housing (e.g., elderly, family, cooperative, group homes) to determine the average management fee for the State; and
- Meeting with industry groups to obtain input and the fees established by the National Office.

Above a certain threshold, any modification to the National Office's established fees must be published and circulated to all borrowers. When the Agency determines these thresholds, they will be published along with the established fees.

The Agency will allow split fee arrangements as described in Exhibit 3-8.

### **Exhibit 3-8**

#### **Split Fees**

The Agency allows split fee arrangements, provided prior consent of the Agency is obtained and the arrangements provide professional services of value, are financially prudent, and paid from earned management fees. However, the Agency carefully scrutinizes split fee arrangements to ensure that the owner/borrower is providing professional services of value.

Arrangements that specify the professional services that the owner will provide in exchange for splitting the earned management fee with the management agent may be permissible. The arrangement may be viewed as a more efficient means of collecting payments for the professional services provided by the owner.

Arrangements that are construed merely as markups for higher fees, without the property receiving appropriate compensating benefits or value derived from the arrangement may be construed just as inappropriate as passing funds through another layer of organizational structure for the sole purpose of deriving added fees, without the benefit of any professional services of value.

The Agency views fees paid or ownership acquisition requirements being imposed for the sole purpose of deriving a fee, when no professional services are being provided, as an abusive and prohibited practice.

## **2. Add-on Fees**

Add-on fees are a flat dollar per unit fee paid to agents managing projects with long-term project characteristics and conditions that require additional management effort beyond the activities covered by the residential management fee. For example, scattered site projects will often require greater management effort than single site projects.

- The National Office will establish a standard list of add-on fees that will be applicable to all States.

- Exhibit 3-9 lists examples of project characteristics/conditions that may warrant the use of add-on fees.
- Add-on fees should not cover project characteristics/conditions that are already covered in the residential income fee. Agents may not take add-on fees for management of properties with work-out agreements except under limited circumstances, and solely at the Agency's discretion. If it is demonstrated that conditions at the property are beyond the management agent's control, the Agency may agree to allow the management agent to take add-ons to the management fee for the circumstances listed above. The Agency's decision may not be appealed.

Every three years, the Agency will develop and publish for public comment the amount and qualifications to receive add-on fees. The Agency will make the final set of qualifications available to all borrowers.

### **Exhibit 3-9**

#### **Examples of Circumstances Under Which Add-On Fees May Be Used**

- |   |
|---|
| <ul style="list-style-type: none"> <li>• Management of properties with 16 units or less;</li> <li>• Management of scattered sites in multiple communities;</li> <li>• Management of properties with more than one type of project-based subsidy; and</li> <li>• Management of various types of properties (congregate care, family).</li> </ul> |
|---|

### **3. *Incentive Fees***

Management agents are eligible to receive incentive fees under certain circumstances. Incentive fees are awarded to:

- Encourage the management agent to operate the project well and to comply with all Agency requirements; and
- Encourage superior performance.

On an annual basis, the National Office will publish the maximum allowable incentive fees based on input from the industry (e.g., \$50 per unit per year). Actual incentive fees must be set by the Agency but agreed upon between the borrower and the management agent. Every three years, the Agency will develop and publish for public comment the amount and qualifications to receive incentive fees. The Agency will make the final set of qualifications available to all borrowers.

To be eligible to receive an incentive fee, the amount must be paid for out of property operations and should not pose any hardship to the project. Incentive fee requests are to be made for the project's previous fiscal year and must be submitted with the audit. The Agency will review requests for incentive fees each year by June 30.

Incentive fees may be paid by the property to a management agent only if the property has funds available and if doing so will not pose a financial hardship to the property or prevent the property from paying for other necessary repairs, goods, and/or services. The property cannot accrue incentive fees as an accounts payable. Either the property can afford to pay the fee once the Agency deems the management agent eligible, or the management agent must forego the fee.

The fees are awarded to management agents for two levels of compliance, as follows:

- If there are no supervisory findings generated for the project during the fiscal year, and the supervisory review rating for all categories is acceptable without comments, the management agent will be entitled to receive the full incentive fee allowed by the Agency; and
- If there are no supervisory findings generated for the project during the fiscal year, and the review rating for any item is acceptable with comments, the management agent will be entitled to half of the incentive fee allowed by HUD.

### C. Management Fee Conversions

If management agents are charging a fee calculated as a percentage of the amount of income collected by the projects, the Agency will require them to convert to pupm fees.

For properties converting from a percentage fee to a pupm fee, the percentage fee should be translated to a per unit level using the average vacancy rate over the last 12 months.

The following example shows how management fees would be calculated under the new pupm system for the project described in the previous example. As stated above in paragraph 3.10.B.1, a management fee may be collected for each unit that is occupied for all or part of a given month.

#### Example

A fifty-unit property has a gross rent potential of \$20,000 per month, or \$240,000 per year. The average vacancy rate for the last 12 months is 5%. The current management fee is 6%. The pupm fee would be calculated as follows:

$$\begin{array}{rcl} \$20,000 \times .95 & = & \$19,000 \\ \$19,000 \times 6\% & = & \$1,140 \\ \$1,140 \div 50 \text{ units} & = & \$22.80 \text{ pupm} \end{array}$$

#### Example

A fifty-unit property has basic rents of \$400 per unit. In a particular month, one unit was vacant for the entire month and one was vacant from the 16<sup>th</sup> to the 30<sup>th</sup>. The management fee, at \$22.80 per month would be as follows:

$$\$22.80 \times 49 = \$1,117.20$$

Under the new system, the management agent would be eligible to receive a management fee equal to the greater of the Agency-approved standard or \$22.80 for each occupied unit per month, until such time as the Agency-approved standard exceeds the amount of the capped management fee. If at the time of transition, the management agent's fee exceeds the regional cap, the agent may not increase its fee until the regional cap exceeds the management agent's transitional fee.

#### **D. Services Paid from the Management Fee**

The purpose of the management fee is to compensate the Agent for providing oversight to the project including:

- Overseeing compliance with national, state, and local laws and regulations;
- Establishing strong project management policies and procedures; and
- Overseeing the implementation laws, regulations, policies, and procedures through the supervision of on-site staff.

A breakdown of items that are to be paid from the management fee can be found in **Attachment 3-F**.

The management fee should only cover the elements listed in **Attachment 3-F**. When the bundle of services for which a management fee is currently paid is different from the bundle of services defined by the Agency or when the basis for the fee is different than the per occupied unit per month basis defined by the Agency, the Agency will allow for a transition period to minimize impact of the conversion to the new method. Borrowers may follow this process or may simply convert to the new method. To translate a bundle of services management fee to be consistent with the bundle of services defined by the agency, the borrower/management agent should use the following process:

- Determine the elements covered in the current bundle of services and to which budget line items from *Form RD 1930-7, Multi-Family Housing Project Budget* they correspond;
- Use the bundle of services management fee from the most recent annual financial statements, and divide it into its various components or budget line items. For example, if the agent's current management fee includes the salary for the resident manager, photocopier lease payments, photocopier expenses, office expenses, and bank fees, these amounts must be separated from the current management fee into the appropriate line items to arrive at the new management fee. To the extent possible, the line item amounts should be supported by invoices or similar documentation. If an invoice represents expenses of more than one project, the proration between properties should be documented;

- Calculate the new management fee by using the lump sum amount after deductions have been made for the other line items; and
- Determine the pupm management fee by dividing the lump sum amount by the number of units in the property. Divide the quotient by 12 to arrive at the new pupm management fee.

An example demonstrating implementation of this process is included in **Attachment 3-H**.

Regardless of what services are included in the bundle of services fee, the actual management fee amount, net of other expenses paid, should be the same. The management fee under the Agency defined bundle of services would only be smaller if the pupm amount exceeded the State cap.

#### **E. Services Paid from Project Income**

In general, project income is used to pay for project-related items. Examples include the salary, benefits, and office expenses of on-site office staff, maintenance expenses for the property and costs for processing project-specific transactions (e.g., tenant certifications). A specific breakdown of items that are to be paid from project income as opposed to the management fee can be found in **Attachment 3-G**.

The borrower and management agent must obtain materials, supplies, utilities, and services at a reasonable cost and seek the most advantageous terms for the project. The borrower or management agent must credit any rebates, fees, proceeds, or commissions generated by transactions using project funds to the project.

## SECTION 4: INSURANCE, BONDING, AND TAXES

### 3.11 OVERVIEW

Insurance protects the asset against loss or damage. Borrowers without adequate insurance coverage are financially responsible for:

- Property damage;
- Losses due to employee dishonesty or error; and
- Personal injuries that occur on the property.

Borrowers are responsible for acquiring and maintaining insurance on all dwellings and buildings that are necessary for the operation of the project in accordance with their loan or grant documents. Insurance must be in place at loan closing and must remain in place until the loan is paid in full. Reevaluation of insurance coverage is necessary when new buildings are constructed or values increase or decrease materially. Any refund or rebate from the insurance company must be credited to the project's reserve account.

The Field Office is responsible for counseling the borrower regarding the Agency's insurance requirements and ensuring borrower compliance. The Agency will obtain insurance for the secured property if the borrower is unable or unwilling to do so. If borrowers refuse to pay the insurance premium with their own funds or fail to arrange with the agent for subsequent payment by premium note or otherwise, the Agency will pay the amount of the insurance premium and charge the premium payment amount and all costs associated with procurement of the required insurance to the borrower's Agency account. The Agency considers a borrower's failure to maintain adequate insurance coverage or to pay taxes as nonmonetary default. If a borrower habitually fails to pay insurance premiums in a timely manner, the Agency will require the borrower to escrow amounts appropriate to pay the insurance premiums. Borrowers who are unable to furnish property and hazard insurance coverage of any kind are responsible for the debt in the event of loss.

### 3.12 TYPES OF INSURANCE

#### A. Property Insurance

Property insurance protects the physical asset against loss due to damage. Types of property insurance include:

- **Hazard Insurance** protects the property against fire and weather-related damage, as well as damage from civil commotion, aircraft, or other vehicles. These policies may also be known as Fire and Extended Coverage, Homeowners, All Physical Loss, or Broad Form policies.
- **Flood Insurance** protects the property against flooding caused by natural disasters such as hurricanes. This coverage is required only for those properties located in areas identified as flood hazard areas.

- **Builder's Risk insurance** protects the property against loss or damage during construction or reconstruction after an insured loss.
- **Elevator, Boiler and Machinery coverage** may be required for any property that operates steam boilers, turbines, engines, or other pressure vessels.
- **Sinkhole Insurance or Mine Subsidence Insurance** is recommended for projects located in areas prone to these geological phenomena.
- **Business Income, or rent loss coverage** provides coverage for the loss of rental income incurred due to a property loss during a 12-month period.

Acceptable exclusions from “All Risk” insurance policies include:

- War or military action;
- Nuclear hazard;
- Volcanic eruptions;
- Fraudulent or dishonest acts committed by the insured; and
- Dispersal, release, or escape of contaminants, or pollution (biological or chemical agents).

#### **B. Fidelity Coverage**

Fidelity insurance protects the property against loss due to employee dishonesty. The policy will provide coverage on all persons with access to project assets. Fidelity coverage may also be known as Blanket Crime Coverage or Fidelity Bond. The Agency specifically requires fidelity coverage for cooperative housing projects.

#### **C. Mortgage's Errors and Omissions (E&O) Insurance**

E&O coverage protects the borrower against loss resulting from negligence, errors, or omissions committed by those persons covered under the borrower's fidelity insurance policy. Obtaining Errors and Omissions insurance does not diminish or limit the borrower's documentary obligations and responsibilities.

#### **D. Liability Insurance**

This coverage insures against any personal injury that might occur in or on the project's common areas, common elements, commercial space, and public areas.

#### **E. Workers' Compensation**

This insurance coverage which is also known as employer's liability coverage is required by the Agency.



### 3.13 INSURANCE REQUIREMENTS

#### A. Evidence of Insurance

At the time of policy renewal, borrowers must provide an ACORD 25S temporary evidence of liability insurance form or ACORD 75S temporary evidence insurance liability. If a certificate is not available, the Agency will accept a letter signed by the borrower and the insurance broker certifying that the coverage, deductibles, and exclusions meet the Agency's requirements.

Within 90 days of the delivery of the loan or the date of the insurance policy renewal, the Loan Servicer must review a copy of the original policy and place it in the borrower's case file.

#### B. Coverage Requirement

Not all borrowers are required to purchase and maintain Flood, Earthquake, Errors and Omissions, or Boiler and Machinery coverage.

- Flood insurance is required for any property located in a Special Flood Hazard Area (SFHA), as identified by the Federal Emergency Management Agency (FEMA). *FEMA Form 81-93, Standard Flood Hazard Determination* is used to determine if a property is in a SFHA and whether flood insurance is available under FEMA's National Flood Insurance Program. If the property is in a SFHA, the Agency will notify the borrower using *Form RD 3550-6, Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance*. The borrower must sign and return *Form RD 3550-6* prior to loan closing. If the borrower cannot secure flood insurance through FEMA's National Flood Insurance Program in a SFHA, the property is not eligible for Federal financial assistance.
- Although the Agency does not specifically require a project to be covered by earthquake insurance, it recommends a Probable Maximum Loss (PML) seismic study for all projects located in certain regions of the country in which earthquakes are prevalent.
- The Agency requires Boiler and Machinery Insurance in any property that has centralized HVAC equipment in operation.

#### C. Deductibles

##### 1. "All Risk" Policies

Deductibles for "All Risk" insurance policies may not exceed the following:

- \$25,000 per occurrence for all projects; and
- One percent of the replacement cost of all projects covered by a blanket policy, but in no instance more than \$250,000.

If a property's insurance policy has a deductible, the deductible must be accounted for in the reserve account unless the deductible does not exceed:

- \$1,000 on any project with an insurable value under \$200,000; or
- One-half of one percent of the insurable value, up to \$5,000 on a project with an insurable value over \$200,000.

If, when applying for a loan or grant to construct the project, the best policy the borrower can obtain contains a deductible clause with amounts greater than those stated above, the borrower must submit to the Agency:

- The insurance policy; and
- An explanation and documentation that more adequate insurance coverage was not available.

## **2. *Flood Insurance***

The Agency allows a maximum deductible of \$5,000 per building.

## **3. *Windstorm Coverage***

When windstorm coverage is excluded from the "All Risk" policy, the deductible must not exceed five percent of the total insured value.

## **4. *Earthquake Coverage***

In the event that the borrower obtains earthquake coverage, the Agency is to be named as a loss payee. The deductible should be no more than 10 percent of the coverage amount.

## **5. *Sinkhole Insurance or Mine Subsidence Insurance***

The deductible for sinkhole insurance or mine subsidence insurance should be similar to what would be required for earthquake insurance.

# **3.14 DETERMINING MINIMUM INSURANCE COVERAGE**

## **A. *Property Insurance***

The minimum property insurance coverage per building is 100 percent of the "Total Estimated Reproduction Cost of New Improvements," as reflected in the appraisal report. If no appraisal report is required, the Agency will perform the necessary evaluations and determine and document the minimum insurance coverage requirements in the file.

### **1. *Windstorm Coverage***

The windstorm policy should include extended coverage for rental loss for at least 12 months, except for coverage provided by state insurance programs.

### **2. *Earthquake Coverage***

The coverage amount should be for 100 percent of the replacement cost of the project.

### **3. *Sinkhole Insurance or Mine Subsidence Insurance***

The amount of coverage that the Agency recommends for properties located in areas prone to these geological phenomena is 100 percent of the replacement cost of the structure affected.

### **4. *Business Income Coverage***

The Agency does not require but recommends that the project be insured against loss of business income or rent in the event of a property loss that causes one or more units to be uninhabitable for a period of time. Business income coverage may be obtained in one of two forms:

- Actual loss sustained; or
- A fixed amount equal to the annualized amount of monthly gross potential rents.

## **B. Fidelity Insurance**

The fidelity insurance policy, at a minimum, must include an insuring agreement that covers employee dishonesty. The minimum amount of fidelity coverage will be the amount calculated by multiplying an exposure index by a coverage factor. When the calculated amount is less than \$10,000, minimum coverage of \$10,000 must be provided. This calculation is made as follows:

- Determine exposure index: Exposure index = 25 percent of the SUM of annual cash receipts (rents, cash subsidy, interest, etc.) and cash (cash carryover, reserves, CDs, tax and insurance escrows, etc.). Round to next higher \$1,000.
- Determine coverage: Coverage = exposure index X coverage factor taken from the coverage chart. Round to next higher \$1,000.

**Exhibit 3-10**  
**Insurance Coverage**

| <b>Exposure Index</b>    | <b>Coverage Factor</b> |
|--------------------------|------------------------|
| \$100,000 or less        | 0.30                   |
| \$100,000 to \$200,000   | 0.28                   |
| \$200,000 to \$300,000   | 0.26                   |
| \$300,000 to \$400,000   | 0.24                   |
| \$400,000 to \$500,000   | 0.22                   |
| \$500,000 to \$600,000   | 0.20                   |
| \$600,000 to \$700,000   | 0.18                   |
| \$700,000 to \$800,000   | 0.16                   |
| \$800,000 to \$900,000   | 0.14                   |
| \$900,000 to \$1,000,000 | 0.12                   |
| \$1,000,000 or more      | 0.10                   |

A deductible is designed to allow flexibility in balancing what the project can prudently pay from its own assets, at a time of loss, against the economy of annual premiums in its annual budget. The following deductible levels will meet Agency requirements:

**Exhibit 3-11**  
**Fidelity Coverage Deductible Levels**

| <b>Fidelity Coverage</b>   | <b>Deductible Level</b> |
|----------------------------|-------------------------|
| Under \$50,000             | \$1,000                 |
| In the area of \$100,000   | \$2,500                 |
| In the area of \$250,000   | \$5,000                 |
| In the area of \$500,000   | \$10,000                |
| In the area of \$1,000,000 | \$15,000                |

Each year borrowers must review and adjust, if necessary, their fidelity coverage.

## **C. Liability Insurance**

### **1. Commercial General Liability**

The insurer's limit of liability per occurrence for personal injury, bodily injury, or property damage under the terms of coverage must be at least \$1 million. The Agency allows a deductible not to exceed \$5,000 per occurrence. Coverage may also include borrower exposure to risks such as errors and omissions, environmental damage, or protection against discrimination claims.

### **2. Umbrella Liability Insurance**

The Agency recommends, but does not require, the borrower to obtain umbrella liability insurance to provide coverage over and above the \$1,000,000 provided for in the commercial general liability policy. The Agency recommends that umbrella liability insurance policies provide coverage as follows:

- For projects with buildings of one to three stories, \$1,000,000;
- For projects with buildings of four to ten stories, \$5,000,000; and
- For projects with buildings of 11 to 20 stories, \$10,000,000.

### **3. *Commercial Automobile Liability Insurance***

The Agency recommends that the borrower purchase commercial automobile liability insurance to cover all automobiles used for business purposes related to the project. The recommended amount of coverage is \$1,000,000 per occurrence.

## **3.15 INSURANCE EXEMPTIONS**

### **A. Property Insurance**

Property insurance is not required if:

- The building is in such a state of disrepair that the cost of insurance would be prohibitive;
- The building has a depreciated replacement value of \$2,500 or less; or
- The hazards are so slight because of the character and construction of the building, or the cost of the insurance is so high in comparison with the value of the building that, according to common standards of judgment, it should not be insured.

### **B. Fidelity Coverage**

The Agency does not require the borrower to have fidelity coverage on the project if the borrower is:

- An individual or general partnership and the borrower will be responsible for the financial activities of the project; or
- A limited partnership unless one or more of the general partners perform financial acts within the scope of the usual duties of an employee.

Fidelity insurance is not required under the following circumstances:

- When a loan is made to an individual or a general partnership, and that individual or general partner will be responsible for the project's financial activities. Individuals cannot bond against their own actions. For land trusts where the beneficiary is responsible for project management, the beneficiary is treated as an individual;
- For the general partners of a limited partnership, unless one or more of its general partners perform financial acts coming within the scope of the usual duties.

### 3.16 AUTHORIZED INSURANCE PROVIDERS

Borrowers are responsible for selecting an insurance provider that meets Agency requirements. The insurance provider must be licensed or authorized to do business in the state or jurisdiction where the project is located. The insurance company cannot have an IOI relationship with the borrower or management agent. In making the determination that an insurance company is reputable and financially sound the Agency uses all relevant available information including financial statements, Best's Insurance Reports, and information from state insurance authorities.

The borrower is required to disclose any identity-of-interest relationships with the insurance company or must certify that none exist.

### 3.17 POLICY REQUIREMENTS

#### A. Fidelity Coverage

Fidelity coverage must be documented on a bond form acceptable to the Agency. Fidelity coverage policies must state that the insurance company will provide protection to the insured against the loss of money, securities, and property through any criminal or dishonest acts by any employee acting alone or in collusion with others. The amount of indemnity will not exceed the amount stated in the declaration of coverage.

The portion of the insurance premium to cover project site employees and general partners is an eligible project expense. The premium paid by the management agent is part of the agent's management expense and cannot be claimed as a project expense. When a project site employee is covered under the management agent's fidelity policy, the pro rata portion of the premium covering the employee should be reflected in the management plan.

#### B. Property Insurance

The project's property insurance policy must include the following:

- **Name and Location.** The policy should contain the names of the borrowers who are owners of the property being insured. The exact location of the property should be described in the policy.
- **Loss or Damage Covered.** The policy must indicate that the buildings are insured against loss or damage by fire, smoke, lightning, windstorms, hail, earthquake, explosion, riot, civil commotion, aircraft, and vehicles.
- **Effective Date of Insurance.** If there are insurable buildings located on the property, the policy's effective date will be on or before loan closing or assumption, or before the credit sale is closed, so that the policy will properly insure the borrower and the mortgagees. When new buildings are erected or major improvements made to existing buildings, such insurance will be made effective as of the date materials are delivered to the property. The Agency will not advance loan funds for labor or

materials until the borrower has furnished adequate insurance to protect the interest of the Agency.

- **Term.** The borrower must furnish insurance for a term of at least one year, with evidence that a full year's premium is paid. If the policy is the type that imposes an assessment only after a loss has occurred the borrower must provide documentation from the insurance company that no assessment is owed. If the insurance policy is automatically renewable the renewal clause must meet Agency requirements.
- **Loss Payee.** The Agency must be named loss payee, which means if there is a damage or loss the insurance draft will be made payable to the Agency.
- **Mortgage Clause.** The standard mortgage clause adopted by the State or the Agency "Property Insurance Mortgage Clause (Without Contribution)" must be attached to or printed in the insurance policy. Whenever a new mortgage clause highlighting the Agency's interest is issued after the policy has been in force, the new mortgage clause must be signed by an authorized agent or officer of the company that issued the policy.

The mortgage clause is not required if:

- ◇ An authorized official of an insurance company provides a statement that all insurance policies the company issues in the state, and in which RD has a mortgage interest, incorporate all of the provisions of *Form RD 426-2*. This statement may be accepted in lieu of attaching the form to each policy. If such a blanket letter is used, RD must be named in the loss payable clause and a state instruction will be issued authorizing the use of this method after prior approval is obtained from the Agency.
- ◇ For all hazard and flood insurance policies the Agency will be named as copayee.
- ◇ For Builder's Risk policies the borrower must be named as the insured party and the policy must convert to full coverage when the project is completed.

### C. Blanket Policies

Blanket insurance policies for several buildings or properties located on noncontiguous sites are acceptable if the insurer provides proof that the secured property is as fully protected as if a separate policy were issued.

Blanket crime insurance coverage or fidelity bonds are acceptable types of fidelity coverage. At a minimum, a borrower must provide the Agency with an endorsement listing all Agency properties and their locations covered under the policy or bond as evidence of required fidelity insurance. The policy or bond may also include properties or operations other than Agency-financed properties on separate endorsement listings.

Individuals or organizational borrowers must have fidelity coverage when they have employees with access to multi-family housing complex assets. A borrower who uses a

management agent with exclusive access to housing assets must require the agent to have fidelity coverage on all principals and employees with access to the project. If project management reverts to the borrower, the borrower must immediately obtain fidelity coverage.

### **3.18 BORROWER FAILURE TO MEET INSURANCE REQUIREMENTS**

The field staff is responsible for taking all actions in connection with insurance that are necessary to protect the security interest of the Agency. Any unusual situation that may arise with respect to borrowers procuring or maintaining insurance should be referred to the State Director. The State Director may refer questions to OGC.

#### **A. Unacceptable Insurance Policy**

When the borrower submits a policy or binder that does not meet Agency requirements the field staff will return the policy/binder to the borrower with a form letter that provides the reasons for the policy's unacceptability and requires an acceptable policy within 30 days.

In cases where the borrower cannot obtain the required insurance the field staff will attempt to provide the borrower with a list of authorized insurance providers. After the field staff and the borrower exhaust all efforts to obtain acceptable insurance, the Loan Servicer will request advice from the State Office about companies issuing acceptable policies in the State and from which the borrower might be able to obtain an acceptable policy. If acceptable coverage still cannot be obtained from an authorized provider and the determination has been made to continue with the borrower, the Loan Servicer will temporarily accept from the borrower the available insurance policy the Agency determines most nearly conforms to established requirements. Whenever adequate insurance becomes available, the State Director will require the borrower to deliver to the Field Office an acceptable insurance policy.

#### **B. Expired Policies**

When an expired insurance policy is not renewed, the Loan Servicer will request the insurance agency or broker who issued the expired policy to issue a new policy. The new policy will be effective as of the date of the Loan Servicer's contact with the insurance agency or broker or as soon as possible thereafter, and will be for a term of one year. The Agency will be shown in the loss payable clause and in the mortgage clause in the proper order of priority. Insurance coverage on each building usually will be the same as shown on the expired policy if it meets or exceeds Agency requirements. If the coverage shown on the expired policy does not meet Agency requirements, proper coverage will be obtained. The Loan Servicer will, if possible, have an automatic renewal provision included in the policy. If the insurance agency or broker who issued the expired policy refuses to issue a new policy, the Loan Servicer will have the borrower designate in writing another insurance agency or broker from whom the insurance can be obtained.



### **C. Force-Placed Insurance**

If the borrower does not furnish acceptable insurance within the required time frame the Loan Servicer will begin the process of procuring the required insurance. The costs of procuring the insurance and the premium amount will be added to the borrower's Agency account.

## **3.19 SPECIAL SERVICING OF INSURANCE**

### **A. Vacancy or Increased Hazard**

If the Loan Servicer has knowledge that insured property is vacant or that there is increased risk of hazard he will:

- Examine the policy to determine whether the policy permits such conditions;
- Immediately notify the company or agent in writing if the policy does not permit such conditions; and
- Pay any required additional premiums if the premium is required because of vacancy, unoccupancy, tenant occupancy, or other increased hazard, or upon demand by the insurance company because the borrower cannot, or will not, pay the additional premium.

### **B. Transfer**

When the Agency discovers that a transfer has occurred without prior Agency consent, the following is required:

- The Loan Servicer informs the transferee that the mortgage documents require the owner to provide and maintain adequate insurance acceptable to the Agency.
- The transferee may obtain a new insurance policy or the transferor may have the insurance company or agent issue an endorsement to the current insurance policy changing the name of the insured to that of the transferee.
  - ◊ If a new insurance policy is obtained, the old policy or other evidence of insurance will be returned to the transferor unless there is an unsettled loss. If there is an unsettled loss, the policy or other evidence of insurance will not be returned until the claim has been settled.
- The Loan Servicer will notify the borrower and transferee that acceptance of the new policy or endorsement will not constitute consent to the transfer by the Agency even though the Agency is protected by a loss payable clause in such an insurance policy. In a transfer with assumption, insurance will be required in the same amount and according to the same provisions as for an initial loan of the same type.

### **C. Voluntary Conveyance in Lieu of Foreclosure**

Insurance will not be carried on buildings that the Agency has acquired. After a foreclosure sale has been held, or after a deed of conveyance to the Agency in lieu of foreclosure has been filed for record, insurance will not be maintained by the Agency (whether or not subject to redemption).

## **3.20 PROPERTY DAMAGE OR LOSS**

Borrowers must notify the Agency and their insurance company agents of any loss or damage to the insured property.

### **A. When Loss or Damage is Discovered**

Upon being notified of loss or damage the Loan Servicer will:

- Check the borrower's case file for an insurance policy or other evidence of insurance. When a policy or other evidence of insurance has not been retained by the Agency the Loan Servicer will determine whether the property was insured and whether FmHA was named as mortgagee in the insurance policy.
- Determine that the borrower has taken such steps as are necessary to protect the interest of the Agency in the security property against further damage. When serious problems arise with respect to protecting the property from further damage, the borrower cannot or will not arrange adequate protection for the property, or when legal action appears to be necessary, the Loan Servicer will arrange for emergency protection and immediately refer the case with complete information to the State Director.
- Collect the amount of the loss and may consent to the borrower using the funds to repair or replace damaged or destroyed property or to apply the loss proceeds to his loan account or to any prior liens that might exist in the order of their priority, if the Agency is listed as mortgagee in the insurance policy.
- Contact the borrower to determine whether he has received the loss proceeds, if the Agency is not listed as mortgagee in the insurance policy. If the borrower has received the loss proceeds but has not yet paid for improvements to repair or replace the property, or has not received the loss proceeds, the Loan Servicer will:
  - ◇ Notify the insurance company in writing of the Agency's interest in the security property and request that the loss proceeds be made payable jointly to the Agency and the borrower.
  - ◇ Inform the borrower of his responsibility for repairing or replacing the damaged or destroyed property or for authorized disposition of the loss proceeds.

## **B. Loss Drafts**

A loss draft is payment from the insurance provider for property loss or damage. Loss drafts for loans secured by a first mortgage, which in the opinion of the Agency represents a satisfactory adjustment of the loss will be endorsed immediately without recourse and deposited in a supervised bank account to be used in repairing or replacing the damaged building, except when:

- The amount of the loss is \$5,000 or less and the borrower will use the funds for repairing or replacing an essential building. The loss draft may be endorsed without recourse and given to the borrower upon satisfactory proof that the repairs or replacements have been made, or upon satisfactory assurance that the work will be performed;
- The essential buildings are not to be repaired or replaced and other suitable buildings are not to be erected;
- A balance remains after all repairs, replacements, and other authorized disbursements have been made, insurance funds can be applied as follows:
  - ◊ To prior liens;
  - ◊ As an extra payment to the borrower's loan account; or
  - ◊ To the borrower's reserve account.
- The indebtedness secured by the insured property has been paid in full or the draft is in payment for loss of property on which the Agency has no claim. A loss draft that includes the Agency as a joint payee may be endorsed without recourse and delivered to the borrower.

Loss drafts for a loan that is not secured by an Agency first mortgage will be released by the Agency only if the primary mortgagee agrees to the provisions set forth in the previous part.

## **3.21 TAXES**

### **A. Real Estate Taxes**

Borrowers are responsible for paying real estate taxes each year. The Agency will receive notice of payment through the Annual Financial Report. Failure to pay taxes and assessments when due will be considered a default.

When the Agency discovers that a borrower has failed to pay property taxes or local assessments, the Loan Servicer will notify the borrower, in writing, to pay the property's taxes and that paying taxes are the borrower's responsibility. The notification letter will request proof of payment of taxes within 30 days. The Agency will only make an exception to the requirement for payment of taxes if the borrower formally contests the

amount of the property assessment and escrows the amount of the taxes. If the borrower fails to submit proof of payment, the Loan Servicer will:

- Determine if taxes have been paid;
- Pay delinquent taxes and any penalties;
- Charge the cost of bringing the taxes current to the borrower's Agency account; and
- Require the borrower to establish an escrow account to ensure funds are available for payment of taxes.

The Agency will require borrowers who have demonstrated an inability to pay taxes in a timely manner to escrow amounts sufficient to pay taxes.

## **SECTION 5: PROJECT MANAGEMENT FOR LABOR HOUSING**

### **3.22 PROJECT MANAGEMENT AND FEES**

#### **A. Off-Farm Labor Housing**

Project management for Off-Farm Labor Housing will be in accordance with the procedures established in this chapter for the Section 515 program. Borrowers are required to submit a management plan, a management certification, a management entity profile and to receive Agency approval on the proposed management agent and the management fee prior to paying a management fee from project income.

#### **B. On-Farm Labor Housing**

Project management for On-Farm Labor Housing projects should follow the same basic procedures as outlined in this chapter for the Section 515 program with the following exceptions:

- On-farm Labor Housing borrowers are expected to manage their own properties and should not need to charge a fee for this service.
- On-farm borrowers should submit a modified management plan to the Agency for concurrence. This plan should detail:
  - ◊ The borrower's operational plan demonstrating how the housing will be managed in a nonprofit manner;
  - ◊ The occupancy policies, including the conditions required for continued occupancy by the tenant;
  - ◊ The borrower's procedures for addressing maintenance issues (e.g., the work order system); and
  - ◊ The borrower's procedures for addressing tenant grievances.
- On-farm borrowers are required to maintain a lease or employment contract with each tenant specifying employment with the borrower as a condition for continued occupancy.

### **3.23 INSURANCE REQUIREMENTS**

#### **A. Off-Farm Labor Housing**

Off-farm labor housing must comply with the same insurance requirements as specified for the Section 515 program in this chapter.

**B. On-Farm Labor Housing**

On-Farm Labor Housing borrowers must ensure that they provide hazard insurance adequate to cover replacement of the property in case of loss. On-farm Labor Housing borrowers must comply with the same flood insurance requirements as specified in paragraph 3.13.B.

## **ATTACHMENT 3-A**

### **BORROWER CERTIFICATION THAT NO CHANGES ARE REQUIRED TO THE MANAGEMENT PLAN**

(To be submitted once every three years if no changes are needed to the management plan during that period)

I, \_\_\_\_\_ certify that there have been no changes in the project's operations during the last three years, that the project operations are consistent with the current management plan, and that the plan is adequate to ensure project compliance with the loan documents and the applicable Agency requirements.

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(Borrower)





**ATTACHMENT 3-B**  
**MANAGEMENT ENTITY PROFILE**



**ATTACHMENT 3-C**  
**FORM HUD 2530**



## ATTACHMENT 3-D

### EXAMPLES OF NONDISCRIMINATION POLICIES AND PRACTICES BORROWERS MUST ADDRESS

- How will applicants and tenants be made aware that the owner will provide reasonable accommodations (unless doing so would cause an undue administrative burden)?
- How will requests for reasonable accommodations be handled and who is authorized to approve or deny any such requests?
- Does the project have a Telecommunication Device for the Deaf (TDD) or an *equally effective communication system*? (Note: If the complex has Section 8 assistance from HUD, the complex is required to have a TDD)
- If the project has a TDD, is the public made aware that there is a TDD? For example, is the TDD telephone number given each time the project's telephone number is given?
- If the project relies on a relay service as an *equally effective communication system* (rather than having a TDD), who operates the relay service? Is the relay service available 24 hours a day and without any added cost to the disabled person?
- Have procedures been established to accommodate hearing- and sight-impaired applicants and tenants? Examples of methods the borrower might use include readers, sign language interpreters, Braille, etc.
- Does management give priority for fully accessible units to persons who are in need of the special design features of an accessible unit? Is priority given first to those living in the complex and then to persons on the waiting list?
- Before accessible units are temporarily rented to people who do not need the special design features, have there been diligent marketing efforts to market the units as accessible units? Have those efforts been documented? Are lease clauses used? Do marketing efforts continue after renting the unit to someone who does not need the special design features?
- Is management's policy for verifying a person's disability limited to only that which is needed to establish eligibility and is verification required only after a tenant or applicant has asked that their disability be considered by management?
- Does management provide their employees with civil rights training?
- When marketing an elderly project, has there been an effort to reach all eligible people? Persons with disabilities (of any age) are every bit as eligible as persons who are 62 or older. Marketing efforts should be designed to reach both population groups.

- Does the borrower/management agent notify the public that they do not discriminate on the basis of disability? Do materials published by the borrower contain such a notice? Use of the Equal Housing Opportunity logo is one means of doing so (the logo is the house with the equal sign and the words Equal Housing Opportunity underneath the house).
- Does management have a policy that permits persons with disabilities to have service and/or companion animals?
- Does management give persons with disabilities the same choices other applicants are given? For example, the choice to pick either first or second floor apartments.

**ATTACHMENT 3-E**  
**MANAGEMENT CERTIFICATION**





**ATTACHMENT 3-F**  
**COSTS AND SERVICES TO BE PAID**  
**FROM THE MANAGEMENT FEE**

The following items and services are provided in return for the management fee:

- A. Supervision by the Management Agent and staff (time, knowledge, and expertise) of overall operations and capital improvements of the site.
- B. Hiring, supervision, and termination of on-site staff.
- C. General maintenance of project books and records (general ledger, accounts payable and receivable, payroll, etc.). Preparation and distribution of payroll for all on-site employees including the costs of preparing and submitting all appropriate tax reports and deposits, unemployment and Workers' Compensation reports, and other IRS or state-required reports.
- D. Training provided to on-site staff at the project site.
- E. Preparation and submission of proposed annual budgets and negotiations for approval with RHS, HUD, or other governmental agencies and the borrowers.
- F. Preparation and distribution of RHS, HUD, HFA, or other governmental agency and normal financial reports to borrowers, RHS, HUD, HFA, or other governmental agency.
- G. Ensure preparation and distribution of required year-end reports to RHS, HUD, HFA, or other governmental agency and borrowers.
- H. Preparation of requests for reserve withdrawals, rent increases, or other required adjustments.
- I. Arrange for preparation by outside contractors of Energy Audits and Utility Allowance analysis. Implement appropriate changes.
- J. Preparation and implementation of Affirmative Fair Housing Plans as well as general marketing plans and efforts.
- K. Reviews of tenant certifications and submission of monthly Rental Assistance requests, overage and monies collected for occupancy surcharge. Submit payments where required.
- L. Preparation, approval and distribution of operating disbursements and oversight of project receipts and reconciliation of deposits.
- M. Overhead of Management Agent including:

- Establishment, maintenance, and control of an accounting system adequate to carry out accounting supervision responsibilities.
  - Maintenance of Agent office arrangements, staff, equipment, furniture, and services necessary to communicate effectively with the properties, RHS, HUD, HFA, or other governmental agency and with the borrowers and the main office.
  - Postage expenses related to the normal responsibility for mailings to the properties, RHS, HUD, HFA, or other governmental agency, the tenants, the vendors and the borrowers.
  - Expense of telephone and facsimile communication to the properties, tenants, RHS, HUD, HFA, or other governmental agency and the borrowers.
  - Direct costs of insurance (fidelity bonds covering central office staff, computer and data coverage, general liability, etc.), directly related to protection of the funds and records of the borrower.
  - Central office staff training and ongoing certifications.
  - Maintenance of all required profession and business licenses and permits. (This does not include site office permits or licenses).
  - Insurance coverage for Agents office and operations (Property, Auto, Liability, Errors and Omissions (E&O), Casualty, Workers' Compensation, etc.).
  - Travel of Agent staff to the properties for on-site inspection, training, or supervision activities.
  - Agent bookkeeping for their own business.
- N. Attendance at meetings (including travel) with tenants, borrowers, investors, and/or RHS, HUD, HFA, or other governmental agency.
- O. Development, preparation, and revision of management plans and/or agreements.
- P. Coordination of HUD Certification or Voucher with tenants including reporting to all pertinent agencies and borrowers.
- Q. Direction the investment of project funds into required accounts.
- R. Maintenance of bank accounts and monthly reconciliations.
- S. Preparation, request for, and disbursement of borrowers initial operating capital (for new projects) as well as administration of annual return to borrower.
- T. Account maintenance, settlement, and disbursement of security deposits.

- U. Work with auditors for initial setup of audits and annually thereafter for audit preparation and review. Assistance with supplemental letters and preparation of 1930-8s as well as other RHS, HUD, HFA, or other governmental agency reports.
- V. Storage of records and adherence to records retention requirements.
- W. Assistance to on-site staff with tenant relations and problems. Assist in severe actions (eviction, death, insurance loss, etc.).
- X. Oversight of general and preventive maintenance procedures and policies.
- Y. Development and oversight of asset replacement plans.
- Z. Oversight of preparation of Section 504 reviews, development of plans, and implementation of improvements necessary to comply with plans and Section 504 requirements.
- AA. Reporting to general and limited partners and State Agencies for LIHTC compliance purposes.



## **ATTACHMENT 3-G**

### **COSTS AND SERVICES TO BE PAID FROM PROJECT INCOME**

There are some generally accepted project expenses that may be paid out of the project operating account. These expenses are listed below.

- A. Actual costs for direct personnel costs of permanent and part-time staff assigned directly to the project site. These will include Managers, Maintenance staff, and temporary help for both positions and can including the following specific items:
  - Gross Salary
  - Employer FICA Contribution
  - Federal Unemployment Tax
  - State Unemployment Tax
  - Workers' Compensation Insurance
  - Health Insurance Premiums
  - Cost of Fidelity or comparable insurance
  - Leasing, performance incentive, or annual bonuses
  - Direct costs of travel to off-site locations by on-site staff for property business or training
  - Retirement benefits
- B. Legal fees directly related to the operation and management of the property including tenant lease enforcement actions, property tax appeals and suits, all legal documents, and other project-related matters.
- C. All outside account and auditing fees, if required by RHS, directly related to the preparation of the annual audit, partnership tax returns, and K-1s as well as other outside reports and year-end reports to RHS, HUD, FHA, or other governmental agency.
- D. All repair and maintenance costs for the project including:
  - Maintenance staffing costs and related expenses.
  - Maintenance supplies.
  - Contract repairs to the projects (heating and air conditioning, painting, roofing, etc.).

- Make-ready expenses including painting and repairs, flooring replacement, and appliance replacement as well as drapery/mini-blind replacement (turnover maintenance).
- Preventive maintenance expenses including occupied units repairs and maintenance as well as common area systems repairs and maintenance.
- Costs of snow removal.
- Costs of elevator repairs and maintenance contracts.
- Costs of 504 compliance.
- Costs of landscaping maintenance, replacements, and seasonal plantings.
- Costs of pest control services.
- Other related maintenance expenses.

E. Specific costs that may be charged to the project include:

- The costs of obtaining and receiving credit reports, police reports, and other checks related to tenant selection criteria for prospective residents.
- The costs of duplicating forms for those properties not owning a copier. This will include the costs of producing or purchasing forms and mailing or delivering those forms to the project site.
- All bank charges related to the property including purchases of supplies (stamps, checks, deposit slips, returned check fees, service fees, etc.).
- Costs of site-based telephone including initial installation, basic services, directory listings, and long distances charges.
- All advertising costs related specifically to the operations of that project. These can include advertising for applicants or employees in newspapers, newsletters, radio, cable TV, and telephone books.
- Postage and delivery costs from the site including expenses to RHS, HUD, or other governmental agencies, tenants, verifying third parties, central management offices, etc.
- Partnership filing expenses including state taxes and other mandated state or local fees as well as other relevant expenses. Costs of continuation financing statements and site license and permit costs.
- Expenses related to site utilities including actual costs and surcharges as well as deposits and expense of utility bonds in lieu of bonds.

- Site office furniture and equipment including site-based computer and copiers. Service agreements and warranties for copiers, telephone systems, and computers are also included (if approved by RHS and make good business sense).
- Real estate taxes (personal/tangible property and real property taxes) and expenses related to controlling or reducing taxes.
- All costs of insurance including property liability and casualty as well as fidelity or crime and dishonesty coverage for on-site employees and the general partners.
- Costs of collecting rents on-site including bookkeeping supplies and record keeping items.
- Costs of preparing and maintaining tenant files and processing tenant certifications including all office supplies, copies, and other associated expenses.
- Public relations expenses related to maintaining positive relationships between the local community and the tenants with the management staff and the borrowers. For example, Chamber of Commerce duties, contributions to local charity events, sponsorship of tenant activities, etc.
- Tax Credit Compliance Monitoring Fees imposed by HFAs.
- All insurance deductibles as well as adjuster expenses.
- Professional service contracts (audits and compilations, tax returns, energy audits, utility allowances, architectural, construction, rehabilitation, and inspection contracts, etc.).
- On-site training preapproved by RHS.
- Site manager salary for additional hours associated with congregate housing.





**ATTACHMENT 3-H**  
**CONVERSION OF MANAGEMENT FEES TO BUNDLE**  
**OF SERVICES DEFINED BY THE AGENCY**  
**(for borrower and/or management agent)**

**EXAMPLE**

ABC Management manages a fifty-unit property. The new State cap for management fees is \$28 pupm.

The property's current annual gross potential rents are \$210,000. Included in its bundle of services fee are the following items:

- Actual fee for managing property;
- Resident manager's salary;
- Payroll taxes;
- Photocopier leases;
- Photocopier supplies;
- Postage, supplies for bookkeeping, computer, and basic office supplies; and
- Bank fees.

**Step 1: Determine elements covered by current bundle of services fee.**

ABC Management Company determined that the items covered under its bundle of services fee corresponded to the following line items:

- Management fee (corresponds to line item 20);
- Resident manager's salary (corresponds to line item 19);
- Payroll taxes (corresponds to line item 30);
- Workers' Compensation (corresponds to line item 31);
- Photocopier leases (corresponds to line item 27);
- Photocopier supplies (corresponds to line item 26);
- Postage and supplies for bookkeeping, computer, and office (corresponds to line item 26); and
- Bank fees (corresponds to line item 32).

**Step 2: Using the budget line items from *Form RD 1930-7, Multiple Family Housing Project Budget* as a guide, divide the bundle of services fee into its various components. Use invoices to determine how much to deduct from the management fee for each item.**

|  |                 |
|--|-----------------|
| Management fee (from most recent annual financial statements)                                      | \$50,000        |
| Resident manager's salary (line item 19)   | \$22,000        |
| Photocopier leases (line item 27)  | 3,000           |
| Postage, supplies for bookkeeping, computer, photocopier, and basic office supplies (line item 26) | 5,800           |
| Payroll taxes (line item 30)   | 1,760           |
| Workers' Compensation (line item 31)   | 2,000           |
| Bank fees (line item 32)   | <u>400</u>      |
| <b>Subtotal: Deductions from Management Fee</b>  | <b>\$34,960</b> |

#### MANAGEMENT FEE CONVERSION

| Line Item | Administrative Expense Category from RD Form 1930-7 | Existing Bundle of Services Fee | New Management Fee |
|-----------|---|---------------------------------|--------------------|
| 19        | Site Management Payroll                             |                                 | \$22,000           |
| 20        | Management Fee                                      | \$50,000                        | \$15,040           |
| 21        | Project Auditing Expense                            |                                 |                    |
| 22        | Project Bookkeeping/Accounting                      |                                 |                    |
| 23        | Legal Expenses                                      |                                 |                    |
| 24        | Advertising   |                                 |                    |
| 25        | Telephone and Answering Service                     |                                 |                    |
| 26        | Office Supplies                                     |                                 | \$5,800            |
| 27        | Office Furniture and Equipment                      |                                 | \$3,000            |
| 28        | Training Expense                                    |                                 |                    |
| 29        | Health Insurance and Other Employee Benefits        |                                 |                    |
| 30        | Payroll Taxes                                       |                                 | \$1,760            |
| 31        | Workers' Compensation                               |                                 | \$2,000            |
| 32        | Miscellaneous                                       |                                 | \$400              |
|           | <b>TOTAL</b>  | <b>\$50,000</b>                 | <b>\$50,000</b>    |

**Step 3: Calculate the new management fee by using the lump sum amount after deductions have been made for the other line items.**

|                                   |                   |
|-----------------------------------|-------------------|
| Bundle of services management fee | \$50,000          |
| Less: deductions                  | – <u>\$34,960</u> |
| New lump sum management fee       | \$15,040          |

**Step 4: Determine the pupm management fee by dividing the lump sum amount by the number of units in the property. Divide the quotient by 12 to arrive at the pupm management fee.**

$$\$15,040 \div 50 = \$300.80$$

$$\$300.80 \div 12 = \$25.07 \text{ pupm}$$

With the current bundle of services, the pupm fee would be as follows:

$$\$50,000 \div 12 = \$4,166.67$$

$$\$4,166.67 \div 50 = \$83.33$$

The net amount of fee going to the management agent after all of the corresponding expenses are paid, however, would be the same in both situations.



## ATTACHMENT 3-I

### ANSWERS TO CURRENT MULTI-FAMILY HOUSING PROGRAM AND CIVIL RIGHTS-RELATED COMPLIANCE ISSUES

**1. Is the International Symbol of Accessibility (ISA) required to be on an MFH project sign?**

No. However, borrowers are encouraged to include the ISA on the project sign if:

- There are no physical barriers for someone wishing to inquire or apply for a service or benefit; and
- The project has an accessible route to fully accessible units.

**2. Is the Telecommunication Device for the Deaf (TDD) number required to be on the project sign?**

When project management communicates with hearing-impaired applicants or tenants, they must use either a TTD or an “equally effective communication system.” If a borrower uses a TTD number, the TTD number must be on the project sign. If a borrower uses an equally effective communication system, the borrower must document the process in their self-evaluation and let the public know how this is to be accomplished. However, the borrower is not required to post the relay service phone number on the project sign. Borrowers with Section 8/515 projects are required by HUD to use a TTD.

**3. Are service or companion animals that assist the disabled subject to MFH project “pet” rules?**

No. They are permitted occupancy under the Fair Housing Act and are defined as follows:

- *Service animal.* An animal with special training in helping an individual cope with a physical impairment or one that is necessary for a member of a tenant household to cope with a disability.
- *Companion animal.* An animal with no special training in helping an individual cope with a disability but one that is necessary for a member of a tenant household to cope with a disability.

It is important to note that under reasonable accommodation procedures, a borrower may negotiate service or companion animal occupancy rules with individuals on a case-by-case basis. It is not discriminatory or unreasonable for the borrower to request the tenant to accept responsibility for health and safety, sanitation, and liability for damages to the

premises caused by the animal. However, it is not acceptable for a borrower to require a tenant to pay an additional charge, fee, or cost to maintain a service or companion animal. To do so would be to require disabled tenants to meet additional requirements and incur additional expenses based on their being disabled and having a service or companion animal.

**4. Does an applicant needing special design features have priority for occupancy over a current tenant without a need for the special design features of a fully accessible unit?**

Yes. While tenants without a need for the special design features may occupy a fully accessible unit, prior to occupancy the tenant must agree to move to another unit in the project if a qualified individual needing the special design features applies for occupancy of the fully accessible unit. Borrowers are required to enter into a lease agreement with the tenant without a need for the special design features to ensure that a legal right exists to require the tenant to move to another available unit in the project, when necessary.

**5. What are a few suggestions to improve marketing of fully accessible units?**

Before fully accessible units are rented to persons not in need of the special design features, borrowers must conduct a diligent and documented marketing effort to ensure that those in need of the special design features know about the availability of the units. Such contacts may include, Area Commission on Aging, Physical Rehabilitation Centers, Hospitals, and Disabled Veterans Organizations. Borrowers are encouraged to use the handicap accessibility logo as a marketing tool on the project sign, in advertising, and on contact letters, leaflets, and brochures. When a tenant not needing the design features occupies a fully accessible unit, borrowers are to continue their marketing efforts until a tenant needing the design features is found.

**6. How do borrowers meet 7 CFR 15b numerical requirements for fully accessible units?**

In MFH projects ready for occupancy after June 10, 1982, 7 CFR 15b standards require:

- At least five percent or one unit, whichever is greater, must be fully accessible. To meet the five percent minimum, borrowers must round up to the next whole unit. For example, a 24-unit MFH project must have at least two fully accessible units (8.3 percent) rather than one (4.2 percent).
- Fully accessible units must be comparable in variety to other project units. For example, in a 24-unit project with 12 one-bedroom units and 12 two-bedroom units, one of the fully accessible units should be a one-bedroom unit and the other should be a two-bedroom unit.
- Rents for fully accessible units must be comparable to other same-sized project units.

- If a project has more than one site, fully accessible units may not be clustered at one site, unless only one fully accessible unit is required.
- When a project has a wide variety of units (one, two, three, or four bedrooms), borrowers are not required to exceed the five percent requirement simply to have a fully accessible unit of each type.

**7. Who pays for reasonable accommodations?**

If an eligible applicant or tenant makes a request for a reasonable accommodation, borrowers are to use project resources to complete and pay for the accommodation. A borrower may deny such a request only when the accommodation would cause an undue financial/administrative burden, or a fundamental change in operations. The borrower alone is responsible for the consequences of such a determination. If the borrower takes this position, the applicant or tenant must be permitted to make the requested change at his or her own expense.

**8. What type of reasonable accommodation is made?**

If an eligible applicant or tenant makes a request for a reasonable accommodation, the change to be made should be based on the tenants' assessment of their needs, even when the accommodation may vary from commonly accepted accessibility standards. All improvements should be done in a professional manner and must meet local building code requirements.

**9. When is it appropriate to make inquiries about a person's disability?**

An appropriate question for all applicants to an elderly MFH project is:

- “If you are less than 62 years old, are you eligible for occupancy based on your status as an individual with handicaps or disabilities?”

Regarding the issue of adjustments to income or priority for a unit with special design features, the application form should give the opportunity to make a request for the added benefit. For example, it would be appropriate to ask all applicants and tenants:

- “Do you wish to have priority for an apartment with special design features for persons with disabilities?”
- “Do you wish to claim a \$400 deduction from your income based on a disabling condition?”

By phrasing questions in this manner, applicants are advised of the benefit and allowed to decide for themselves if they wish to disclose a disabling condition. Once an applicant requests that their disability status be considered, inquiries can be made, but only to the extent necessary to verify eligibility. Project management should not attempt to make any determination concerning an applicant's disabling condition.

**10. May a guardian sign a rental agreement on behalf of a qualified person with a disability?**

While there is no Federal law preventing a guardian from signing a rental agreement on behalf of a qualified person with disabilities, State laws may vary. Each borrower should check with his or her legal counsel. To the extent individual state laws permit a guardian to sign a rental agreement, guardian signatures are to be accepted.

**11. What are the requirements for van-accessible parking?**

The requirements vary based on when a project became ready for occupancy. The parking lot of all projects with public areas such as an on-site office, ready for occupancy after January 26, 1993, must be properly striped for van-accessible parking and access aisles. All projects with public areas ready for occupancy before January 26, 1993, must be striped for van-accessible parking and access aisles whenever the parking lot is restriped.

**12. May a borrower allow a resident assistant to occupy a unit overnight to assist a tenant with a disability?**

Yes. When a tenant with a disability provides a physician's statement requiring resident assistant care in excess of the established time periods for visitors, it would be a reasonable accommodation to the rules and policies to allow the resident assistant to reside in the unit in excess of established visitor's time. Further, if the need is for the resident assistant to live in the unit, it is a reasonable accommodation to rent a two-bedroom unit to tenants at their request. The income of a resident assistant is not included in tenant household income.

**13. Is the "interested person(s)" who assists or is consulted during the borrower's preparation of their self-evaluation required to visit the project site?**

No. While interested persons, including disabled persons or organizations representing disabled persons must be consulted they are not required to conduct a site visit.

**14. Is the self-evaluation required to be maintained at the project site?**

Yes, if the project has an office. If there is no office, the borrower is still obligated to make the self-evaluation available to the public upon request. The public includes any applicant, tenant, and the Agency. It is not reasonable for the borrower to expect the public to drive to a location other than the project to view the self-evaluation.

**15. What can be done with projects ready for occupancy after June 10, 1982, that were not built in accordance with UFAS standards, where it is either structurally impractical or financially infeasible to make the required changes?**

Typically, the borrowers should seek guidance from their project architects before making this determination. The Agency will need documentation from a knowledgeable source that it is structurally impractical to make the required changes. For example, in a



project built using a split foyer design, it may be structurally impractical to make changes. The borrower might try to establish a referral agreement with another project in the local market area with a fully accessible unit. If no referral agreement is possible to make the program accessible, the Agency may administratively recognize that the borrower is unable to address their outstanding noncompliance issues. In this case, all avenues have been explored, and the Servicing Office will document the case file to fully explain the situation and the borrower's attempts to resolve the problem, remove the finding(s) from MFIS2 and discontinue reporting the situation through the post supervisory visit and compliance review reporting process.

In some instances, a borrower may claim that a project is not able to meet UFAS standards because the project's financial condition is such that the change would create an undue financial burden. For example, the project is located in a poor rental market and rents are insufficient to address capital needs. While the Agency has no mechanism for waiving the requirements of UFAS standards for financial reasons, the borrower may request a waiver from the Secretary of Agriculture. For such a waiver, the borrower must document the financial condition of the project as well as attempts to seek local, state, private, and Federal funding for grants or loans to correct the condition. As of the date of publication of this handbook, no such waiver has been granted.

- 16. Regardless of when a project was ready for occupancy, all borrowers are required to have "policies and practices" that do not discriminate against persons with disabilities. Where do the borrowers document these "policies and practices"?**

Borrowers document these "policies and practices" in the Management Plan.

- 17. If these policies and practices are not presently covered in the management plan, should we ask everybody to provide written documentation of the "policies" now, or do we wait until the management plan is renewed, or until the next supervisory visit/compliance review (whichever comes first)?**

We recommend that you ensure that borrowers understand that these issues should be addressed in their management plans and that you will review these items in your supervisory visits, compliance reviews, and management plan approvals. However, the agency is not required to conduct a full review of all existing management plans at this time.

- 18. Borrowers are supposed to maintain a record of the self-evaluation for at least three years. How are we going to document if they have one, if the three-year period has passed?**

Part V of *Form RD 400-8, Compliance Review*, should contain a record of self-evaluation status based on Agency review. While the borrower is responsible for retaining records for their own protection, we can retain any self-evaluation shared with us by the borrower in our files.

- 19. When structural changes are necessary, such changes shall be made within three years and as expeditiously as possible. What if major structural changes are needed and they cannot be accomplished within a three-year period?**

Realistically, all structural changes should be accomplished within a three-year time frame unless funding is an issue. When changes are not made within the time frame of the transition plan, the borrower should prepare a new or revised three-year transition plan that documents what has been done, what will be completed, and time frames for completion. Before we accept a plan, we need to be sure that the borrower is sincerely attempting to comply with the accessibility requirements. We also need to ensure that rents and reserve account withdrawals are approved when necessary to make the changes.

- 20. Should transition plans exceed three years? We have seen some that just say “when funds are available.” These plans are typically in projects where there are very little or no reserve accounts and rents must be kept low to keep tenants. In these cases, there may never be funds available.**

Transition plans may not exceed a three-year period and “when funds are available” is never a good time frame. If a poor rental market is the real issue, the transition plan should be clear that the market is the reason the borrower cannot make needed improvements. If there is some way of addressing the cash flow problem (i.e., transfer reserve account, seek state or local grants, etc.) then the Agency should be ready to help the borrower move in that direction. This means that if a rent increase is needed, either to fund the improvement or build up the reserve account, the transition plan should document the amount that is needed and the Agency should be willing to approve higher rents. Also, the borrowers should document their efforts to check for funding elsewhere. Some state and local governments have grant or loan funds that can be used for providing accessibility. Borrowers should be encouraged to seek out such funds if available.

- 21. There are six additional items we are to review during the compliance review. Where are these items to be documented?**

You will notice that some of the questions are already addressed by answers on the physical inspection form or the compliance review. While the Civil Rights staff has not established a separate document for the purpose of documenting this review, your assessment of the borrowers response to the six items should be documented in part V or VI of *Form RD 400-8, Compliance Review*.

- 22. If we should find a borrower out of compliance with accessibility requirements and the borrower comes back with a transition plan that says they will make accommodations as needed, will the Agency be able to accept that and say that the borrower is now in compliance for tracking purposes?**

Yes. However, the borrower is technically out of compliance until the problem is corrected. However, if the borrower has a self-evaluation and a transition plan that describes how that particular finding will be resolved, we have established that the borrower is taking the appropriate steps to resolve his or her problem by establishing a

timetable for corrective action in the transition plan. A good analogy is how we use our workout plan. If a workout plan is in place and is being followed, the Agency can recognize that the default finding is being resolved. Therefore, we treat the project differently in our classification system.

**23. Time frames for compliance are to be provided in Agency notices and will vary according to the nature of the noncompliance issue. Could you give us an example?**

For example, according to Civil Rights staff policy, findings on the compliance review should be corrected in 30 days. This time frame may be expanded if conditions warrant. According to MFH program direction, supervisory visit findings can be resolved using different time frames, generally varying from 30 to 90 days. The Servicing Office has some flexibility in providing corrective deadlines for findings found on the supervisory visit. Usually these deadlines are established in relationship to the seriousness of the finding. Additionally, the letter to the borrower requesting corrective actions can combine findings and corrective time frames from both the compliance review and the supervisory visit.

**24. Do you see any problem with the Agency keeping a copy of the self-evaluation and transition plan in the borrower's file? We initially told our field staff not to keep a copy because we didn't want the borrower to construe that as Agency approval of the documents; however, some of our field employees have asked for copies and are keeping them in the file.**

It is a good idea to keep the self-evaluations and transition plans in the file because you should be reviewing them with each management plan and budget approval. Routine budget approvals should now include reviewing the transition plan to make sure that identified capital improvements are in the budget.

**25. Are agency field staff to become "accessibility" police?**

It is important to understand that since June 10, 1982, 7 CFR 15b requires the Agency to conduct compliance reviews regarding accessibility requirements. The policies expressed in this handbook consolidate and clarify existing Agency understandings regarding accessibility in MFH projects. The handbook goes into much detail about the responsibilities of the Agency and the borrower. The bottom line is that the borrower is the party responsible for project compliance with accessibility laws. The Agency's role is to ensure that the program, in general, is administered in accordance with accessibility laws. We identify noncompliance during limited reviews, make project resources available to help solve problems, report problems through an internal reporting process, and respond to continued serious instances of noncompliance using established MFH program servicing tools.

**26. UFAS requires that wall cabinets in accessible units be mounted at 48" above the floor. In rehabs, that has required relocating them. One owner requested mounting a separate shelf 48" above the floor, between the base and wall cabinets. Is this OK?**

The Access Board has indicated that a shelf between base cabinets provides “equivalent” accessibility when it is not possible to lower wall cabinets. The shelf should not become the standard solution, but can be considered on a case-by-case basis. For example, if funds for rehabilitation are limited, the shelf may be a less expensive solution to removing and relocating wall cabinets. If the project is fully funded, and money is available, the wall cabinets should be relocated. Although deemed “equivalent”, the shelf does not have doors to cover the storage space.

- 27. Is a 30" x 34" high workspace required in an accessible kitchen? While UFAS 4.34.6.4 requires this, it is not included in the list in Attachment B or added to the MFH Physical Inspection form.**

Yes, it is required.

- 28. UFAS 4.13.9 calls for lever handles on entrance doors to accessible units. An item on the MFH Physical Inspection form asks if lever handles were provided. Does this apply to all apartment doors?**

UFAS requires lever handles on apartment unit entry doors only. The question on the MFH Physical Inspection form refers to apartment unit entry doors only. If a tenant needs lever handles throughout a unit, they may be requested as a “reasonable accommodation.”

- 29. Where are grab bars required?**

Grab bars are required in the five percent of units that are “fully accessible.” UFAS 4.34.5 uses the language “If provided, grab bars will ....” Our Agency has taken the position that grab bars will be installed in order to make the “fully accessible” unit ready for a person with disabilities.

Grab bars are also provided in those units in which a tenant has requested them as a “reasonable accommodation.” In those ground floor units constructed since 1991, FHA/AG required blocking for “adaptability.” In those units, grab bars may be installed later as a form of “reasonable accommodation” when requested.

- 30. How do people writing transition plans know to require grab bars?**

Since writers of transition plans base them on UFAS, the proposed plan may call for installing the blocking only, and not installing the grab bars. In requiring a self-evaluation and possibly a transition plan from a borrower, field staff should make them aware that the Agency has taken the position that grab bars are required in five percent of the units that are “fully accessible.”

- 31. An item on the MFH Physical Inspection form refers to a “functional emergency call system.” Are emergency call systems required in all fully accessible units?**

If the fully accessible unit presently has an emergency call system, it must be functional. If no emergency call system is in place, the borrower does not have to provide one at this

time. It may be necessary to add one as a “reasonable accommodation” per tenant request. There has been considerable confusion on this issue, and we realize that this may be a different answer than you have received in the past.

**32. Is additional maneuvering room in the bathroom required?**

Some transition plans are indicating a need to enlarge the bathroom to provide a five-foot turning circle, which UFAS requires, in a public bathroom. Writers of transition plans are incorrectly applying this requirement to a dwelling unit. Agency staff should understand that a dwelling unit bathroom must have clear floor space at the tub/shower and commode, but a 5’ turning circle is not required within a dwelling unit bath. Also, UFAS provides an exception in 4.22.3 for public toilets with only one lavatory and commode. In those toilets, a 5’ turning circle is not required.

**33. In addition to the requirement that five percent of a project’s units must be fully accessible for persons with mobility impairments, is it true that MFH projects must also meet a requirement that an additional two percent of the units (over and above the five percent) must be made fully accessible to individuals with hearing or visual impairments?**

To implement Section 504, both HUD and USDA published regulations to apply to their respective programs. While HUD’s regulations do require that two percent of the units (over and above the five percent that are made fully accessible for persons with mobility impairments) be made fully accessible to individuals with hearing or visual impairments, USDA regulations do not. Consequently, MFH projects with project-based Section 8 that were built on or after July 11, 1988, must meet this requirement, but MFH projects without project-based Section 8 do not.

**34. Are front-loading washers and dryers required in MFH project laundry rooms?**

Yes. UFAS 4.34.7.2 states that “washing machines and clothes dryers in common use laundry rooms shall be front loading.” RHS has taken the position that this requirement is met if at least one washer and one dryer is front loading. This position was taken, in part, in recognition that there may be some increase in cost to provide front-loading washers.

**35. If structural accessibility requirements of the Fair Housing Act were not met due to negligence of the borrowers or their architects during construction, what can be done to get them corrected?**

In cases where fault is established, it is a proper servicing action to seek corrections by borrowers at their own expense. To accomplish these corrections, some borrowers may in turn seek to enforce contractual agreements with project architects.

**36. When an MFH tenant requests a reasonable accommodation, my understanding is that project management should answer the following questions: whether the tenant household contains a qualified individual with a disability; whether the requested accommodation is related to the disability; and whether the requested**

**accommodation is reasonable. If all these conditions are met, should project management automatically make a \$400 adjustment to income?**

Not automatically, but project management should examine the tenant household's situation to see if any of the adjusted income reporting threshold changes will be met, especially a household's potential change in status from nonelderly to elderly. There is no requirement that prevents a borrower from making a reasonable accommodation without receiving verification from the tenant that a household member meets the definition of an individual with a handicap or disability. However, for a household to be considered elderly, the tenant or cotenant must be the person with a verified handicap or disability, rather than a household member who is not the tenant or cotenant.

Consequently, there may be some instances where a tenant chooses not to apply or is ineligible for an elderly household status. Finally, we recommend that application forms ask questions in a direct manner, making the benefit of an elderly designation known, and then leave it up to the applicant to request the designation (See question #9 of this attachment).

**These issues are not meant to cover all situations regarding accessibility. Rural Development servicing staffs are to consult with their MFH State Office staff, SCRC/M and the Program Support staff on issues regarding accessibility.**